

## SECTION II - SENTENCING REFORM ACT INDEX

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b>           |
|--|-----------------------------|-----------------------|
| Abused Victim - Resentencing for Murder of the Abuser                    |                             |                       |
| Eligibility (effective through 6/30/01)                                  | .395(1)                     | II-175                |
| <i>Eligibility (effective 7/1/2001)</i>                                  | .395(1)                     | <i>II-176</i>         |
| Resentencing (effective through 6/30/2001)                               | .395(2)                     | II-175                |
| <i>Resentencing (effective 7/1/2001)</i>                                 | .395(2)                     | <i>II-176</i>         |
| Time Allotted for Review (effective through 6/30/2001)                   | .395(3)                     | II-176                |
| <i>Time Allotted for Review (effective 7/1/2001)</i>                     | .395(3)                     | <i>II-176</i>         |
| Accomplice with Deadly Weapon  | .125                        | II-91                 |
| Additional Conviction While Under Sentence (effective through 6/30/2001) | .400(2),(3)                 | II-177, II-177        |
| <i>Additional Conviction While Under Sentence (effective 7/1/2001)</i>   | .400(2),(3)                 | <i>II-180, II-180</i> |
| Aggravating Circumstances (effective through 6/30/2001)                  | .390(2)                     | II-170                |
| <i>Aggravating Circumstances (effective 7/1/2001)</i>                    | .390(2)                     | <i>II-173</i>         |
| Alternatives to Total Confinement  | .380                        | II-168                |
| Anticipatory Offenses (effective through 6/30/2001)                      | .410                        | II-180                |
| Offender Score (effective through 6/30/2001)                             | .360(4), (6)                | II-160, II-160        |
| Range (effective through 6/30/2001)                                      | .310(2)                     | II-142                |
| <i>Anticipatory Offenses (effective 7/1/2001)</i>                        | .410                        | <i>II-181</i>         |
| <i>Offender Score (effective 7/1/2001)</i>                               | .360(4),(6)                 | <i>II-165, II-166</i> |
| <i>Range (effective 7/1/2001)</i>  | .310(2)                     | <i>II-148</i>         |
| Alien Offenders  | .280                        | II-140                |
| Appellate Procedures and Grounds (effective through 6/30/2001)           | .210                        | II-135                |
| <i>Appellate Procedures and Grounds (effective 7/1/2001)</i>             | .210                        | <i>II-136</i>         |
| Arrest by Community Corrections Officer                                  | .195                        | II-121                |
| Assessments for Supervision  |                             |                       |
| Amounts  | .270(2)                     | II-139                |
| Collection   | .270(3)                     | II-139                |
| Exemptions   | .270(1)                     | II-139                |
| Time for Payment (effective through 6/30/2001)                           | .120(13)                    | II-72                 |
| <i>Time for Payment (effective 7/1/2001)</i>                             | .120(4)                     | <i>II-88</i>          |
| Assault in the First Degree  |                             |                       |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page           |
|---|----------------------|----------------|
| Mandatory Minimum (effective through 6/30/2001)                             | .120(4)              | II-65          |
| <i>Mandatory Minimum (effective 7/1/2001)</i>                               | .590                 | II-193         |
| Assault of a Child First Degree   |                      |                |
| Mandatory Minimum (effective through 6/30/2001)                             | .120(4)              | II-65          |
| <i>Mandatory Minimum (effective 7/1/2001)</i>                               | .590                 | II-193         |
| Attempts (See Anticipatory Offenses)  |                      |                |
| Boot Camps (See Work Ethic Camp Program)                                    |                      |                |
| Burden of Proof   |                      |                |
| Arrest by Community Corrections Officer                                     | .195                 | II-121         |
| Criminal History  | .110                 | II-63          |
| Sentencing Hearing (effective through 6/30/2001)                            | .370(2)              | II-167         |
| <i>Sentencing Hearing (effective 7/1/2001)</i>                              | .370(2)              | II-167         |
| Burglary  |                      |                |
| Scoring First Degree Burglary (effective through 6/30/2001)                 | .360(10)             | II-160         |
| <i>Scoring First Degree Burglary (effective 7/1/2001)</i>                   | .360(10)             | II-166         |
| Scoring Residential or Second Degree Burglary (effective through 6/30/2001) | .360(15)             | II-161         |
| <i>Scoring Residential or Second Degree Burglary (effective 7/1/2001)</i>   | .360(15)             | II-166         |
| Certificate of Discharge  | .220                 | II-137         |
| Classification of Felonies not in Title 9A                                  | .035                 | II-54          |
| Clemency and Pardons Board  |                      |                |
| Emergency Meetings  | .165(2)              | II-117         |
| Establish Board   | .250(1)              | II-138         |
| Membership  | .250(2),(3)          | II-48, II-138  |
| Petitions for Review  | .260                 | II-138         |
| Commission - Sentencing Guidelines  |                      |                |
| Definition (effective through 6/30/2001)                                    | .030(2)              | II-38          |
| <i>Definition (effective 7/1/2001)</i>                                      | .030(2)              | II-48          |
| Emergency Meetings  | .160(1),.165(1)      | II-116, II-116 |
| Membership  | .060                 | II-58          |
| Power and Duties (effective through 6/30/2001)                              | .040                 | II-54          |
| <i>Power and Duties (effective 7/1/2001)</i>                                | .040                 | II-56          |
| Research Staff  | .050                 | II-58          |
| Revision of Ranges  | .070                 | II-60          |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page           |
|---|----------------------|----------------|
| Community Corrections Officer   |                      |                |
| Definition (effective through 6/30/2001)                                  | .030(3)              | II-38          |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(3)              | II-48          |
| Powers  | .195                 | II-121         |
| Community Custody   |                      |                |
| Definition (effective through 6/30/2001)                                  | .030(4)              | II-38          |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(4)              | II-48          |
| Drug Offender Sentencing Alternative (DOSA) (effective 7/1/2001)          | .660(2)(a)           | II-194         |
| Sex Offenses (effective through 6/30/2001)                                | .120(10), (15)       | II-71, II-73   |
| <i>Sex Offenses (effective 7/1/2001)</i>                                  | .710, .715           | II-199, II-200 |
| Sex Offenders Under SSOSA (effective through 6/30/2001)                   | .120(8)(a)(ii)(A)    | II-68          |
| <i>Sex Offenders Under SSOSA (effective 7/1/2001)</i>                     | .670                 | II-195         |
| Violations  | .205                 | II-132         |
| Community Custody Range   |                      |                |
| Definition (effective through 6/30/2001)                                  | .030(5)              | II-38          |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(5)              | II-48          |
| Community Placement   |                      |                |
| Arrest of Violators   | .207                 | II-134         |
| Definition (effective through 6/30/2001)                                  | .030(6)              | II-38          |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(6)              | II-48          |
| Drug Offender Sentencing Alternative (DOSA) (effective through 6/30/2001) | .120(6)              | II-66          |
| Mandatory (effective through 6/30/2001)                                   | .120(9)(a),(b)       | II-70, II-70   |
| Post-release Supervision (effective through 6/30/2001)                    | .030(30)             | II- 41         |
| <i>Post-release Supervision (effective 7/1/2001)</i>                      | .030(32)             | II-51          |
| Violations  | .175                 | II-117         |
| Scoring Offenses, Status Point (effective through 6/30/2001)              | .360(17)             | II-161         |
| <i>Scoring Offenses, Status Point (effective 7/1/2001)</i>                | .360(17)             | II-167         |
| Community Service   |                      |                |
| Definition (effective through 6/30/2001)                                  | .030(7)              | II-38          |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(7)              | II-48          |
| Drug Offender Sentencing Alternative (DOSA) (effective through 6/30/2001) | .120(6)              | II-66          |
| <i>Drug Offender Sentencing Alternative (DOSA) (effective 7/1/2001)</i>   | .660                 | II-194         |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page                |
|---|----------------------|---------------------|
| First-time Offender (effective through 6/30/2001)                                   | .120(5)(a)(vi)       | II-65, II-65        |
| <i>First-time Offender (effective 7/1/2001)</i>                                     | .650                 | II-193              |
| Prohibition on Violent Offense Conversions  | .380                 | II-168              |
| Sentence Conversions  | .380                 | II-168              |
| Sex Offenders Under SSOSA (effective through 6/30/2001)                             | .120(8)(a)(ii)       | II-68               |
| <i>Sex Offenders Under SSOSA (effective 7/1/2001)</i>                               | .670                 | II-195              |
| Supervision of Community Service (effective through 6/30/2001)                      | .120(15)             | II-73               |
| <i>Supervision of Community Service (effective 7/1/2001)</i>                        | .720                 | II-201              |
| Community Supervision   |                      |                     |
| Assessment Payments   | .270                 | II-139              |
| Confinement for One Year or Less (effective through 6/30/2001)                      | .383                 | II-169              |
| <i>Confinement for One Year or Less (effective 7/1/2001)</i>                        | .383                 | II-169              |
| Commencement of Supervision (effective through 6/30/2001)                           | .383                 | II-169              |
| <i>Commencement of Supervision (effective 7/1/2001)</i>                             | .383                 | II-169              |
| Consecutive Sentences, Total Confinement Served First (effective through 6/30/2001) | .400(5)              | II-177              |
| <i>Consecutive Sentences, Total Confinement Served First (effective 7/1/2001)</i>   | .400(5)              | II-180              |
| Definition (effective through 6/30/2001)  | .030(8)              | II-38               |
| <i>Definition (effective 7/1/2001)</i>  | .030(8)              | II-48               |
| First-time Offender (effective through 6/30/2001)                                   | .120(5)              | II-65               |
| <i>First-time Offender (effective 7/1/2001)</i>                                     | .650                 | II-193              |
| Limitation on Community Supervision (effective through 6/30/2001)                   | .120(5),(13),(14)    | II-65, II-72, II-73 |
| <i>Limitation on Community Supervision (effective 7/1/2001)</i>                     | .650,.120(5)         | II-193, II-89       |
| Supervision (effective through 6/30/2001)   | .120(15)             | II-73               |
| <i>Supervision (effective 7/1/2001)</i>   | .720                 | II-201              |
| Unranked Offenses (effective through 6/30/2001)                                     | .120(7)              | II-67               |
| <i>Unranked Offenses (effective 7/1/2001)</i>                                       | .120(2)(a)(i)        | II-82               |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b>           |
|--|-----------------------------|-----------------------|
| Voluntary Counseling   | .220(4)                     | II-137                |
| Concurrent Sentences   |                             |                       |
| Multiple Prior Convictions (effective through 6/30/2001)         | .360(5)                     | II-160                |
| <i>Multiple Prior Convictions (effective 7/1/2001)</i>           | .360(5)                     | II-165                |
| Multiple Current Convictions (effective through 6/30/2001)       | .400(1)(a)                  | II-176                |
| <i>Multiple Current Convictions (effective 7/1/2001)</i>         | .400(1)(a)                  | II-179                |
| Serious Violent Offenses Exception (effective through 6/30/2001) | .400(1)(b)                  | II-176                |
| <i>Serious Violent Offenses Exception (effective 7/1/2001)</i>   | .400(1)(b)                  | II-179                |
| Confinement  |                             |                       |
| Alternative Conversions  | .380                        | II-168                |
| Credit for Time Served (effective through 6/30/2001)             | .120(17)                    | II-74                 |
| <i>Credit for Time Served (effective 7/1/2001)</i>               | .120(6)                     | II-89                 |
| Confinement of 30 Days or Less (effective through 6/30/2001)     | .120(12)                    | II-72                 |
| <i>Confinement of 30 Days or Less (effective 7/1/2001)</i>       | .120(3)                     | II-88                 |
| Definition (effective through 6/30/2001)                         | .030(9)                     | II-38                 |
| <i>Definition (effective 7/1/2001)</i>                           | .030(9)                     | II-48                 |
| Extraordinary Release (effective through 6/30/2001)              | .150(4),(5)                 | II-110, II-110        |
| <i>Extraordinary Release (effective 7/1/2001)</i>                | .150(4),(5)                 | II-112, II-112        |
| Furlough (effective through 6/30/2001)                           | .150(3)                     | II-110                |
| <i>Furlough (effective 7/1/2001)</i>                             | .150(3)                     | II-112                |
| Good Time (Earned Early Release) (effective through 6/30/2001)   | .150(1)                     | II-109                |
| <i>Good Time (Earned Early Release) (effective 7/1/2001)</i>     | .150(1)                     | II-111                |
| Limitation on Confinement (effective through 6/30/2001)          | .120(14)                    | II-73                 |
| <i>Limitation on Confinement (effective 7/1/2001)</i>            | .120(5)                     | II-89                 |
| Partial Confinement (effective through 6/30/2001)                | .030(28),.150(6),.180       | II-41, II-110, II-118 |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>  | <b>Section of 9.94A RCW</b> | <b>Page</b>             |
|---|-----------------------------|-------------------------|
| <i>Partial Confinement (effective 7/1/2001)</i>                 | .030(30),.150(6),.180       | II-51, II-112<br>II-118 |
| Ten-day Early Release (effective through 6/30/2001)             | .150(8)                     | II-110                  |
| <i>Ten-day Early Release (effective 7/1/2001)</i>               | .150(8)                     | II-113                  |
| Tolling Confinement Period                                      | .170                        | II-117                  |
| Total Confinement   |                             |                         |
| Definition (effective through 6/30/2001)                        | .030(38)                    | II-42                   |
| <i>Definition (effective 7/1/2001)</i>                          | .030(41)                    | II-52                   |
| Consecutive Sentence (effective through 6/30/2001)              | .400                        | II-176                  |
| <i>Consecutive Sentence (effective 7/1/2001)</i>                | .400                        | II-179                  |
| Conspiracy (effective through 6/30/2001)                        | .310(2)                     | II-142                  |
| <i>Conspiracy (effective 7/1/2001)</i>                          | .310(2)                     | II-148                  |
| Scoring (effective through 6/30/2001)                           | .360(4),(6)                 | II-160, II-160          |
| <i>Scoring (effective 7/1/2001)</i>                             | .360(4),(6)                 | II-165, II-166          |
| Presumptive Sentence (effective through 6/30/2001)              | .410                        | II-180                  |
| <i>Presumptive Sentence (effective 7/1/2001)</i>                | .410                        | II-181                  |
| Continuance of Sentencing Hearing                               | .110                        | II-63                   |
| Convictions   |                             |                         |
| Burden of Proof   | .110                        | II-63                   |
| Court's Findings  | .110                        | II-63                   |
| Definition (effective through 6/30/2001)                        | .030(10)                    | II-38                   |
| <i>Definition (effective 7/1/2001)</i>                          | .030(10)                    | II-48                   |
| Offender Score (effective through 6/30/2001)                    | .360                        | II-159                  |
| <i>Offender Score (effective 7/1/2001)</i>                      | .360                        | II-165                  |
| Out-of-state Convictions (effective through 6/30/2001)          | .360(3)                     | II-159                  |
| <i>Out-of-state Convictions (effective 7/1/2001)</i>            | .360(3)                     | II-165                  |
| Vacation of Conviction  | .230                        | II-137                  |
| Correctional Facility Enhancement (effective through 6/30/2001) | .310(5)                     | II-143                  |
| <i>Correctional Facility Enhancement (effective 7/1/2001)</i>   | .310(5)                     | II-149                  |
| Credit for Time Served (effective through 6/30/2001)            | .120(17)                    | II-74                   |
| <i>Credit for Time Served (effective 7/1/2001)</i>              | .120(6)                     | II-66                   |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject  | Section of 9.94A RCW | Page   |
|--|----------------------|--------|
| Community Placement (effective through 6/30/2001)                      | .120(9)(a)           | II-70  |
| <i>Community Placement (effective 7/1/2001)</i>                        | .700                 | II-198 |
| Sex Offender with Suspended Sentence                                   | .120(8)(a)(vi)       | II-69  |
| Violation Hearing  | .200(3)(c)           | II-122 |
| Criminal History   |                      |        |
| Concurrent Prior Convictions (effective through 6/30/2001)             | .360(5)              | II-160 |
| <i>Concurrent Prior Convictions (effective 7/1/2001)</i>               | .360(5)              | II-165 |
| Current Convictions (effective through 6/30/2001)                      | .360(1)              | II-159 |
| <i>Current Convictions (effective 7/1/2001)</i>                        | .360(1)              | II-165 |
| Definitions (effective through 6/30/2001)                              | .030(13)             | II-39  |
| <i>Definitions (effective 7/1/2001)</i>                                | .030(13)             | II-49  |
| Effect of Vacation of a Conviction                                     | .230(3)              | II-137 |
| Evidence Standard  | .110                 | II-63  |
| Misdemeanor Exception (Serious Traffic) (effective through 6/30/2001)  | .360(11)             | II-160 |
| <i>Misdemeanor Exception (Serious Traffic) (effective 7/1/2001)</i>    | .360(11)             | II-166 |
| Plea Agreements  | .100                 | II-61  |
| Sex and Class A Offenses Always Counting (effective through 6/30/2001) | .360(2)              | II-159 |
| <i>Sex and Class A Offenses Always Counting (effective 7/1/2001)</i>   | .360(2)              | II-165 |
| Crime-related Prohibition  |                      |        |
| Community Supervision (effective through 6/30/2001)                    | .030(8)              | II-38  |
| <i>Community Supervision (effective 7/1/2001)</i>                      | .030(8)              | II-48  |
| Definition (effective through 6/30/2001)                               | .030(12)             | II-39  |
| <i>Definition (effective 7/1/2001)</i>                                 | .030(11)             | II-48  |
| First-time Offender (effective through 6/30/2001)                      | .120(5)              | II-65  |
| <i>First-time Offender (effective 7/1/2001)</i>                        | .650                 | II-193 |
| Partial Confinement (effective through 6/30/2001)                      | .180                 | II-118 |
| <i>Partial Confinement (effective 7/1/2001)</i>                        | .180                 | II-118 |
| Sex Offender (effective through 6/30/2001)                             | .120(8)(a)(i)        | II-67  |
| <i>Sex Offender (effective 7/1/2001)</i>                               | .670                 | II-195 |
| Counseling (See Treatment)   |                      |        |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page                     |
|---|----------------------|--------------------------|
| Counseling Costs of Victim (effective through 6/30/2001)                    | .120(8)(a)(ii)       | II-68                    |
| <i>Counseling Costs of Victim (effective 7/1/2001)</i>                      | .670                 | II-210                   |
| Upon Discharge  | .220                 | II-137                   |
| Court Costs (See Legal Financial Obligations) (effective through 6/30/2001) | .120(13)             | II-72                    |
| <i>Court Costs (See Legal Financial Obligations) (effective 7/1/2001)</i>   | .140, .142, .145     | II-100, II-103<br>II-107 |
| Day Fine (effective through 6/30/2001)                                      | .030(14)             | II-39                    |
| <i>Day Fine (effective 7/1/2001)</i>  | .030(13)             | II-49                    |
| Day Reporting (effective through 6/30/2001)                                 | .030(4),(15)         | II-38, II-39             |
| <i>Day Reporting (effective 7/1/2001)</i>                                   | .030(4),(14)         | II-48, II-49             |
| Deadly Weapon   |                      |                          |
| Accomplice  | .125                 | II-91                    |
| Addition to Sentence Range (effective through 6/30/2001)                    | .310(4),.370         | II-142, II-167           |
| <i>Addition to Sentence Range (effective 7/1/2001)</i>                      | .310(4),.370         | II-148, II-167           |
| Definition  | .125                 | II-91                    |
| Findings of Fact or Special Verdict   | .125                 | II-91                    |
| Firearm (effective through 6/30/2001)                                       | .310(3)              | II-142                   |
| <i>Firearm (effective 7/1/2001)</i>   | .310(3)              | II-148                   |
| Decay of Prior Record Policy (See "Wash Out")                               |                      |                          |
| Deception, Fraud, Notice to Public (effective until 6/30/2001)              | .140(4),.142(5)      | II-99                    |
| <i>Deception, Fraud, Notice to Public (effective 7/1/2001)</i>              | .140(7),.142(8)      | II-101, II-104           |
| Deferred Sentences Abolished (effective until 6/30/2001)                    | .130                 | II-93                    |
| <i>Deferred Sentences Abolished (effective 7/1/2001)</i>                    | .130                 | II-93                    |
| Department of Corrections   |                      |                          |
| Community Service and Supervision (effective through 6/30/2001)             | .120(15)             | II-73                    |
| <i>Community Service and Supervision (effective 7/1/2001)</i>               | .720                 | II-201                   |
| Definition (effective through 6/30/2001)                                    | .030(16)             | II-39                    |
| <i>Definition (effective 7/1/2001)</i>                                      | .030(15)             | II-49                    |
| Determination and Collection of Assessments                                 | .270(2),(3)          | II-139, II-139           |



## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page         |
|---|----------------------|--------------|
| Determinate Sentence  |                      |              |
| Application (effective through 6/30/2001)                                 | .120(1)              | II-65        |
| <i>Application (effective 7/1/2001)</i>                                   | .120(2)(a)(i)        | II-82        |
| Definition (effective through 6/30/2001)                                  | .030(17)             | II-39        |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(16)             | II-49        |
| Outside Standard Range (effective until 6/30/2001)                        | .120(2),(3)          | II-65, II-65 |
| <i>Outside Standard Range (effective 7/1/2001)</i>                        | .390                 | II-172       |
| Unranked Crimes (effective through 6/30/2001)                             | .120(7)              | II-67        |
| <i>Unranked Crimes (effective 7/1/2001)</i>                               | .120(2)(b)           | II-82        |
| Disapproval of Plea Agreement   | .090(1)              | II-61        |
| Discharge of Offender   | .220                 | II-137       |
| Disposable Earnings Definition (effective through 06/30/2001)             | .030(18)             | II-39        |
| <i>Disposable Earnings Definition (effective 7/1/2001)</i>                | .030(17)             | II-49        |
| DOC Specialized Training Requirement                                      | .132                 | II-94        |
| Drug Offender Sentencing Alternative (DOSA) (effective through 6/30/2001) | .120(6)              | II-66        |
| <i>Drug Offender Sentencing Alternative (DOSA) (effective 7/1/2001)</i>   | .660                 | II-194       |
| Drug Offense  |                      |              |
| Definition (effective through 6/30/2001)                                  | .030(19)             | II-39        |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(18)             | II-49        |
| Scoring Rule (effective through 6/30/2001)                                | .360(12)             | II-160       |
| <i>Scoring Rule (effective 7/1/2001)</i>                                  | .360(12)             | II-48        |
| Sentencing Alternative (effective through 6/30/2001)                      | .120(6)              | II-66        |
| <i>Sentencing Alternative (effective 7/1/2001)</i>                        | .660                 | II-194       |
| Drug Offenders Notice of Release or Escape                                | .154                 | II-113       |
| Early Release   |                      |              |
| Limitations, Certain Offenders (effective through 6/30/2001)              | .120(4)              | II-65        |
| <i>Limitations, Certain Offenders (effective 7/1/2001)</i>                | .560                 | II-192       |
| Earned Early Release (effective through 6/30/2001)                        | .150(1)              | II-109       |
| <i>Earned Early Release (effective 7/1/2001)</i>                          | .150(1)              | II-111       |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW     | Page                            |
|---|--------------------------|---------------------------------|
| Ten-day Early Release (effective until 6/30/2001)       | .150(8)                  | II-110                          |
| <i>Ten-day Early Release (effective 7/1/2001)</i>       | <i>.150(8)</i>           | <i>II-113</i>                   |
| Education   |                          |                                 |
| First-time Offender (effective through 6/30/2001)       | .120(5)(a)(iii)          | II-65                           |
| <i>First-time Offender (effective 7/1/2001)</i>         | <i>.650</i>              | <i>II-193</i>                   |
| Work Release (effective through 6/30/2001)              | .030(44)                 | II-43                           |
| <i>Work Release (effective 7/1/2001)</i>                | <i>.030(47)</i>          | <i>II-53</i>                    |
| Emergency Release (effective through 6/30/2001)         | .150(9),.160,.165        | II-110, II-116<br>II-116        |
| <i>Emergency Release (effective 7/1/2001)</i>           | <i>.150(9),.160,.165</i> | <i>II-113, II-116</i><br>II-116 |
| Amend or Revise Standard Range                          | .160(1),.165(1)          | II-116, II-116                  |
| Clemency and Pardons Board                              | .160(2),.165(2)          | II-116, II-117                  |
| Sentencing Guidelines Commission                        | .160(1),.165(1)          | II-116, II-116                  |
| Enhancements  |                          |                                 |
| Correctional Facility (effective through 6/30/2001)     | .310(5)                  | II-143                          |
| <i>Correctional Facility (effective 7/1/2001)</i>       | <i>.310(5)</i>           | <i>II-149</i>                   |
| Deadly Weapon (effective through 6/30/2001)             | .310(4)                  | II-142                          |
| <i>Deadly Weapon (effective 7/1/2001)</i>               | <i>.310(4)</i>           | <i>II-148</i>                   |
| Firearm (effective through 6/30/2001)                   | .310(3)                  | II-142                          |
| <i>Firearm (effective 7/1/2001)</i>                     | <i>.310(3)</i>           | <i>II-148</i>                   |
| Protected Zone (effective through 6/30/2001)            | .310(6)                  | II-143                          |
| <i>Protected Zone (effective 7/1/2001)</i>              | <i>.310(6)</i>           | <i>II-150</i>                   |
| Vehicular Homicide (effective through 6/30/2001)        | .310(7)                  | II-144                          |
| <i>Vehicular Homicide (effective 7/1/2001)</i>          | <i>.310(7)</i>           | <i>II-150</i>                   |
| Equal Application of Guidelines                         | .340                     | II-159                          |
| Escape  |                          |                                 |
| Definition (effective through 6/30/2001)                | .030(20)                 | II-39                           |
| <i>Definition (effective 7/1/2001)</i>                  | <i>.030(21)</i>          | <i>II-49</i>                    |
| Scoring Rules (effective through 6/30/2001)             | .360(14)                 | II-161                          |
| <i>Scoring Rules (effective 7/1/2001)</i>               | <i>.360(14)</i>          | <i>II-166</i>                   |
| Tolling of Sentence                                     | .170                     | II-117                          |
| Willful Failure to Return (effective through 6/30/2001) | .360(13)                 | II-161                          |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b>    |
|--|-----------------------------|----------------|
| <i>Willful Failure to Return (effective 7/1/2001)</i>              | .360(13)                    | II-166         |
| Evaluation of Sex Offender (effective through 6/30/2001)           | .120(8)(a)(i)               | II-67          |
| <i>Evaluation of Sex Offender (effective 7/1/2001)</i>             | .670, .820                  | II-195, II-203 |
| Exemptions for Assessments   | .270(1)                     | II-139         |
| Exceptional Sentences  |                             |                |
| Aggravating Circumstances (effective through 6/30/2001)            | .390(2)                     | II-170         |
| <i>Aggravating Circumstances (effective 7/1/2001)</i>              | .390(2)                     | II-173         |
| Appellate Opinions   | .210(6)                     | II-136         |
| Appellate Review   | .210(2),(4)                 | II-135, II-136 |
| Concurrent/Consecutive Sentences (effective through 6/30/2001)     | .120(18),.400               | II-74, II-176  |
| <i>Concurrent/Consecutive Sentences (effective 7/1/2001)</i>       | .390, .400                  | II-172, II-179 |
| Determinate Sentence (effective through 6/30/2001)                 | .120(3)                     | II-65          |
| <i>Determinate Sentence (effective 7/1/2001)</i>                   | .390                        | II-172         |
| Findings of Fact, Conclusions of Law (effective through 6/30/2001) | .120(3)                     | II-65          |
| <i>Findings of Fact, Conclusions of Law (effective 7/1/2001)</i>   | .390                        | II-172         |
| Length of Sentence (effective through 6/30/2001)                   | .120(14)                    | II-73          |
| <i>Length of Sentence (effective 7/1/2001)</i>                     | .120(5)                     | II-89          |
| Mandatory Minimum Terms (effective through 6/30/2001)              | .120(4)                     | II-65          |
| <i>Mandatory Minimum Terms (effective 7/1/2001)</i>                | .590                        | II-193         |
| Method of Appellate Review   | .210(5)                     | II-136         |
| Mitigating Circumstances (effective through 6/30/2001)             | .390(1)                     | II-170         |
| <i>Mitigating Circumstances (effective 7/1/2001)</i>               | .390(1)                     | II-173         |
| Record   | .210(5)                     | II-136         |
| Substantial and Compelling Reasons (effective until 6/30/2001)     | .120(2),.120(7)             | II-65, II-67   |
| <i>Substantial and Compelling Reasons (effective 7/1/2001)</i>     | .390,.120(1)(b)             | II-172, II-79  |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>  | <b>Section of 9.94A RCW</b> | <b>Page</b>   |
|---|-----------------------------|---------------|
| Felony Drug Convictions (effective through 6/30/2001)             | .360(12)                    | II-160        |
| <i>Felony Drug Convictions (effective 7/1/2001)</i>               | <i>.360(12)</i>             | <i>II-166</i> |
| Felony Traffic Offense  |                             |               |
| Definition (effective through 6/30/2001)                          | .030(21)                    | II-39         |
| <i>Definition (effective 7/1/2001)</i>                            | <i>.030(22)</i>             | <i>II-49</i>  |
| Scoring Rule (effective through 6/30/2001)                        | .360(11)                    | II-160        |
| <i>Scoring Rule (effective 7/1/2001)</i>                          | <i>.360(11)</i>             | <i>II-166</i> |
| Fines   |                             |               |
| Definition (effective through 6/30/2001)                          | .030(22)                    | II-39         |
| <i>Definition (effective 7/1/2001)</i>                            | <i>.030(23)</i>             | <i>II-49</i>  |
| First-time Offenders (effective through 6/30/2001)                | .120(5)(a)(vi)              | II-65         |
| <i>First-time Offenders (effective 7/1/2001)</i>                  | <i>.650</i>                 | <i>II-193</i> |
| Ranges for Fines  | .386                        | II-169        |
| Sex Offender (effective through 6/30/2001)                        | .120(8)(a)(ii)              | II-68         |
| <i>Sex Offender (effective 7/1/2001)</i>                          | <i>.670</i>                 | <i>II-195</i> |
| Supervision (effective through 6/30/2001)                         | .120(15)                    | II-73         |
| <i>Supervision (effective 7/1/2001)</i>                           | <i>.720</i>                 | <i>II-201</i> |
| Time and Manner for Payment (effective through 6/30/2001)         | .120(13)                    | II-72         |
| <i>Time and Manner for Payment (effective 7/1/2001)</i>           | <i>.120(4)</i>              | <i>II-88</i>  |
| Firearm Enhancement (effective through 6/30/2001)                 | .310(3)                     | II-142        |
| <i>Firearm Enhancement (effective 7/1/2001)</i>                   | <i>.310(3)</i>              | <i>II-148</i> |
| First-time Offenders  |                             |               |
| Definition (effective through 6/30/2001)                          | .030(23)                    | II-40         |
| <i>Definition (effective 7/1/2001)</i>                            | <i>.030(24)</i>             | <i>II-50</i>  |
| Exclusions (effective through 6/30/2001)                          | .030(23)                    | II-40         |
| <i>Exclusions (effective 7/1/2001)</i>                            | <i>.650</i>                 | <i>II-193</i> |
| Specific Conditions (effective through 6/30/2001)                 | .120(5)                     | II-65         |
| <i>Specific Conditions (effective 7/1/2001)</i>                   | <i>.650</i>                 | <i>II-193</i> |
| Fraud or Deceptive Practice (effective through 6/30/2001)         | .142(5)                     | II-103        |
| <i>Fraud or Deceptive Practice (effective 7/1/2001)</i>           | <i>.142(8)</i>              | <i>II-104</i> |
| Notice to Class of Persons Affected (effective through 6/30/2001) | .142(5)                     | II-103        |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page         |
|---|----------------------|--------------|
| <i>Notice to Class of Persons Affected</i><br>(effective 7/1/2001)  | .142(5)              | II-104       |
| Furlough (effective through 6/30/2001)                              | .150(3)              | II-110       |
| <i>Furlough (effective 7/1/2001)</i>                                | .150(3)              | II-112       |
| Exceptions (effective through 6/30/2001)                            | .120(4)              | II-65        |
| <i>Exceptions (effective 7/1/2001)</i>                              | .560                 | II-192       |
| Geographic Limitations  |                      |              |
| First-time Offender (effective through 6/30/2001)                   | .120(5)(a)(iv)       | II-65        |
| <i>First-time Offender (effective 7/1/2001)</i>                     | .650                 | II-193       |
| Sex Offender (effective through 6/30/2001)                          | .120(8)(a)(ii)       | II-68        |
| <i>Sex Offender (effective 7/1/2001)</i>                            | .670                 | II-195       |
| Good Cause - Continuance of Sentence Hearing                        | .110                 | II-63        |
| Good Time (Earned Early Release) (effective through 6/30/2001)      | .150(1)              | II-109       |
| <i>Good Time (Earned Early Release)</i><br>(effective 7/1/2001)     | .150(1)              | II-111       |
| Governor's Pardon effective (effective until 06/30/2001)            | .150(7)              | II-110       |
| <i>Governor's Pardon effective (effective 7/1/2001)</i>             | .150(7)              | II-48        |
| Governor's Powers   | .394                 | II-175       |
| Harassment Conviction   |                      |              |
| Notification Procedures upon Release or Escape                      | .155                 | II-114       |
| Hard Time for Armed Crime Initiative (effective until 06/30/2001)   | .310(3)              | II-142       |
| <i>Hard Time for Armed Crime Initiative</i><br>(effective 7/1/2001) | .310(3)              | II-148       |
| Hearing, Sentencing   |                      |              |
| Continuance   | .110                 | II-63        |
| Court's Consideration   | .110                 | II-63        |
| Criminal History - Preponderance of the Evidence                    | .100                 | II-61        |
| Evidentiary Hearing (effective through 6/30/2001)                   | .370(2)              | II-167       |
| <i>Evidentiary Hearing (effective 7/1/2001)</i>                     | .370(2)              | II-167       |
| Findings of Fact, Conclusions of Law (effective through 6/30/2001)  | .110,.120(3)         | II-63, II-65 |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>  | <b>Section of 9.94A RCW</b> | <b>Page</b>    |
|---|-----------------------------|----------------|
| <i>Findings of Fact, Conclusions of Law</i><br>(effective 7/1/2001) | .110, .390                  | II-63, II-172  |
| Modification of Sentence  | .200(1)                     | II-122         |
| Participants  | .110                        | II-63          |
| Plea Agreement  | .080, .090, .100            | II-60, II-61   |
|   |                             | II-61          |
| Presentence Report (effective through<br>6/30/2001)                 | .110,.370                   | II-63, II-167  |
| <i>Presentence Report (effective 7/1/2001)</i>                      | .110,.370                   | II-63, II-167  |
| Real Facts Policy (effective through<br>6/30/2001)                  | .370                        | II-167         |
| <i>Real Facts Policy (effective 7/1/2001)</i>                       | .370                        | II-167         |
| Record  | .110                        | II-63          |
| Time Limitations, 40-Day Rule                                       | .110                        | II-63          |
| Home Detention  |                             |                |
| Definition (effective through 6/30/2001)                            | .030(24)                    | II-42          |
| <i>Definition (effective 7/1/2001)</i>                              | .030(25)                    | II-50          |
| Eligibility (effective through 6/30/2001)                           | .030(24),.185               | II-42, II-118  |
| <i>Eligibility (effective 7/1/2001)</i>                             | .030(25),.185               | II-50, II-119  |
| Partial Confinement (effective through<br>6/30/2001)                | .180(2),.190(1)             | II-118         |
| <i>Partial Confinement (effective 7/1/2001)</i>                     | .180(2),.190(1)             | II-118, II-121 |
| Sentencing (effective through 6/30/2001)                            | .120(22)                    | II-74          |
| <i>Sentencing (effective 7/1/2001)</i>                              | .120(10)                    | II-90          |
| Violation of Rules (effective through<br>6/30/2001)                 | .180(2)                     | II-118         |
| <i>Violation of Rules (effective 7/1/2001)</i>                      | .180(2)                     | II-118         |
| Hospital Option - Sex Offender (effective<br>through 6/30/2001)     | .120(8)(b)                  | II-67          |
| <i>Hospital Option - Sex Offender (effective<br/>7/1/2001)</i>      | .800                        | II-202         |
| Commitment to DSHS Program (effective<br>through 6/30/2001)         | .120(8)(b)                  | II-67          |
| <i>Commitment to DSHS Program</i><br>(effective 7/1/2001)           | .800                        | II-202         |
| Commitment to DOC Program (effective<br>through 6/30/2001)          | .120(8)(c)                  | II-67          |
| <i>Commitment to DOC Program (effective<br/>7/1/2001)</i>           | .800                        | II-202         |
| Evaluation (effective through 6/30/2001)                            | .120(8)(b)                  | II-67          |
| <i>Evaluation (effective 7/1/2001)</i>                              | .820                        | II-203         |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page   |
|---|----------------------|--------|
| Limitation on Confinement (effective through 6/30/2001)       | .120(8)(b)           | II-67  |
| <i>Limitation on Confinement (effective 7/1/2001)</i>         | .820                 | II-203 |
| Transfer of Program to DOC                                    | .123                 | II-91  |
| Immunity from Liability, Sex                                  |                      |        |
| Offender Information  | .152                 | II-113 |
| Indeterminate Sentence Review Board                           |                      |        |
| Member of Sentencing Guidelines Commission                    | .060(2)              | II-58  |
| Information, Indictment, Dismissal                            | .230(1)              | II-137 |
| Intermittent Sentence   |                      |        |
| Confinement of 30 Days or Less (effective through 6/30/2001)  | .120(12)             | II-72  |
| <i>Confinement of 30 Days or Less (effective 7/1/2001)</i>    | .120(3)              | II-88  |
| Judges (effective through 6/30/2001)                          |                      |        |
| Approval of Plea Agreement                                    | .090(1)              | II-61  |
| No Obligation to Terms of Plea Bargain                        | .090(2)              | II-61  |
| Reasons for Denying Alternative Sentence                      | .380                 | II-168 |
| Report on Sentencing Practices                                | .105                 | II-62  |
| Juvenile Criminal History                                     |                      |        |
| Burglary Convictions (effective through 6/30/2001)            | .360(10)             | II-160 |
| <i>Burglary Convictions (effective 7/1/2001)</i>              | .360(10)             | II-166 |
| Class A, B, C "Wash Out Policy" (effective through 6/30/2001) | .360(2)              | II-159 |
| <i>Class A, B, C "Wash Out Policy" (effective 7/1/2001)</i>   | .360(2)              | II-165 |
| Concurrent Prior Convictions (effective through 6/30/2001)    | .360(5)              | II-160 |
| <i>Concurrent Prior Convictions (effective 7/1/2001)</i>      | .360(5)              | II-165 |
| Criminal History (effective through 6/30/2001)                | .030(13)             | II-39  |
| <i>Criminal History (effective 7/1/2001)</i>                  | .030(12)             | II-48  |
| Definition (effective through 6/30/2001)                      | .030(13)             | II-39  |
| <i>Definition (effective 7/1/2001)</i>                        | .030(13)             | II-49  |
| Drug Convictions (effective through 6/30/2001)                | .360(12)             | II-160 |
| <i>Drug Convictions (effective 7/1/2001)</i>                  | .360(12)             | II-166 |
| Multiple Prior Adjudications (effective through 6/30/2001)    | .360(5)              | II-145 |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b> |
|--|-----------------------------|-------------|
| <i>Multiple Prior Adjudications (effective 7/1/2001)</i>               | .360(5)                     | II-165      |
| Rounding Down (effective through 6/30/2001)                            | .360                        | II-159      |
| <i>Rounding Down (effective 7/1/2001)</i>                              | .360                        | II-165      |
| Sex and Class A Offenses Always Counting (effective through 6/30/2001) | .360(2)                     | II-159      |
| <i>Sex and Class A Offenses Always Counting (effective 7/1/2001)</i>   | .360(2)                     | II-165      |
| Leave of Absence from Custody (effective through 6/30/2001)            | .150(3)                     | II-110      |
| <i>Leave of Absence from Custody (effective 7/1/2001)</i>              | .150(3)                     | II-112      |
| Legal Financial Obligation   |                             |             |
| Civil Action Allowed (effective through 6/30/2001)                     | .145(4)                     | II-105      |
| <i>Civil Action Allowed (effective 7/1/2001)</i>                       | .145(4)                     | II-108      |
| Collect (effective through 6/30/2001)                                  | .030(1)                     | II-38       |
| <i>Collect (effective 7/1/2001)</i>                                    | .030(1)                     | II-48       |
| Cost of Incarceration (effective through 6/30/2001)                    | .145(2)                     | II-105      |
| <i>Cost of Incarceration (effective 7/1/2001)</i>                      | .145(2)                     | II-107      |
| Court Ordered Legal Financial Obligation (effective through 6/30/2001) | .145(1)                     | II-105      |
| <i>Court Ordered Legal Financial Obligation (effective 7/1/2001)</i>   | .145(1)                     | II-107      |
| Definition (effective through 6/30/2001)                               | .030(11)                    | II-38       |
| <i>Definition (effective 7/1/2001)</i>                                 | .030(26)                    | II-50       |
| Disposable Earnings (effective through 6/30/2001)                      | .030(18)                    | II-39       |
| <i>Disposable Earnings (effective 7/1/2001)</i>                        | .030(17)                    | II-49       |
| Exemption from Notice or Order   | .200050                     | II-128      |
| Financial Institutions   | .200040                     | II-127      |
| Modifying (effective through 6/30/2001)                                | .145(7)                     | II-106      |
| <i>Modifying (effective 7/1/2001)</i>                                  | .145(7)                     | II-109      |
| Notice of Debt   | .200045                     | II-128      |
| "Obligee" Defined  | .200005                     | II-124      |
| Order to Withhold and Deliver  |                             |             |
| Issuance and Contents  | .200030                     | II-126      |
| Duties and Rights  | .200035                     | II-126      |
| Payroll Deductions   |                             |             |



## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject  | Section of 9.94A RCW | Page                  |
|--|----------------------|-----------------------|
| Amount Withheld  | .200015              | II-124                |
| Employer Rights and Responsibilities                                       | .200020              | II-125                |
| Quash, Modify or Terminate   | .200025              | II-125                |
| Reporting Requirements (effective through 6/30/2001)                       | .145(5),(7)          | II-106, II-106        |
| <i>Reporting Requirements (effective 7/1/2001)</i>                         | .145(5),(7)          | <i>II-108, II-109</i> |
| Sentences Imposed Before July 1, 1989                                      | .201                 | II-132                |
| Wage Assignments   |                      |                       |
| Amounts to Be Withheld   | .2003                | II-129                |
| Answer   | .2002                | II-129                |
| Employer Responsibilities  | .2005                | II-130                |
| Form and Rules   | .2006                | II-130                |
| Hearing - Scope of Relief  | .2008                | II-132                |
| Petition or Motion   | .2001                | II-129                |
| Recovery of Costs, Attorneys' Fees   | .2009                | II-132                |
| Rules  | .2004                | II-130                |
| Service  | .2007                | II-130                |
| Legislative Modification of Sentence Range                                 | .070                 | II-60                 |
| Emergency Overcrowding   | .160(1),.165(1)      | II-116, II-116        |
| Failure of Legislature to Act  | .160(1),.165(1)      | II-116, II-116        |
| Limitation on Appellate Reversal   | .210(4)              | II-136                |
| Mandatory Minimum Sentences (effective through 6/30/2001)                  | .120(4)              | II-65                 |
| <i>Mandatory Minimum Sentences (effective 7/1/2001)</i>                    | .120(4)              | <i>II-88</i>          |
| Maximum Terms (effective until 6/30/2001)                                  | .120(14)             | II-73                 |
| <i>Maximum Terms (effective 7/1/2001)</i>                                  | .120(5)              | <i>II-89</i>          |
| Misdemeanors   |                      |                       |
| Offender Scoring Exception (Serious Traffic) (effective through 6/30/2001) | .360(11)             | II-160                |
| <i>Offender Scoring Exception (Serious Traffic) (effective 7/1/2001)</i>   | .360(11)             | <i>II-166</i>         |
| Mitigating Circumstances (effective through 6/30/2001)                     | .390(1)              | II-170                |
| <i>Mitigating Circumstances (effective 7/1/2001)</i>                       | .390(1)              | <i>II-173</i>         |
| Modification of Sentence Due to Violations                                 | .200                 | II-122                |
| Modification of Sentence Ranges by Legislature                             | .070                 | II-60                 |
| Monetary Payments Time Limitations (effective through 6/30/2001)           | .120(13)             | II-72                 |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b> |
|--|-----------------------------|-------------|
| <i>Monetary Payments Time Limitations</i><br>(effective 7/1/2001)          | .120(4)                     | II-88       |
| Most Serious Offense   |                             |             |
| Definition (effective through 6/30/2001)                                   | .030(25)                    | II-40       |
| <i>Definition (effective 7/1/2001)</i>                                     | .030(27)                    | II-50       |
| Multiple Current Conviction (effective through 6/30/2001)                  | .400(1)(a)                  | II-176      |
| <i>Multiple Current Conviction (effective 7/1/2001)</i>                    | .400(1)(a)                  | II-179      |
| Multiple Prior Adult and Juvenile Conviction (effective through 6/30/2001) | .360(5)                     | II-160      |
| <i>Multiple Prior Adult and Juvenile Conviction (effective 7/1/2001)</i>   | .360(5)                     | II-165      |
| Murder in the First Degree   |                             |             |
| Mandatory Minimum (effective through 6/30/2001)                            | .120(4)                     | II-65       |
| <i>Mandatory Minimum (effective 7/1/2001)</i>                              | .560                        | II-192      |
| No-Contact Order (effective through 6/30/2001)                             | .120(20)                    | II-74       |
| <i>No-Contact Order (effective 7/1/2001)</i>                               | .120(8)                     | II-90       |
| Notice - Fraud or Deceptive Practice(effective through 6/30/2001)          | .142(5)                     | II-103      |
| <i>Notice - Fraud or Deceptive Practice(effective 7/1/2001)</i>            | .142(5)                     | II-104      |
| Noncompliance with Sentence  |                             |             |
| Arrest by Community Corrections Officer                                    | .195                        | II-121      |
| Burden of Proof  | .200(3)(c)                  | II-123      |
| Credit for Time Served Awaiting Hearing                                    | .200(3)(c)                  | II-123      |
| Hearing  | .200(3)(a)(ii)              | II-122      |
| Modification of Sentence   | .200(1)                     | II-122      |
| Non-willful Violation  | .200(3)(d)                  | II-123      |
| Penalty  | .200(3)                     | II-122      |
| Personal Recognizance, Bail  | .195                        | II-121      |
| Search and Seizure Based on Reasonable Cause                               | .195                        | II-121      |
| Nonviolent Offense (effective through 6/30/2001)                           | .030(26)                    | II-41       |
| <i>Nonviolent Offense (effective 7/1/2001)</i>                             | .030(28)                    | II-51       |
| Notification upon Release or Escape  |                             |             |
| Harassment Conviction  | .155                        | II-114      |
| Serious Drug Offender  | .154                        | II-113      |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject  | Section of 9.94A RCW | Page           |
|--|----------------------|----------------|
| Sex Offender Release                                       | .155                 | II-114         |
| Violent Offense  | .155                 | II-114         |
| Offender   |                      |                |
| Definition (effective through 6/30/2001)                   | .030(27)             | II-41          |
| <i>Definition (effective 7/1/2001)</i>                     | .030(29)             | II-51          |
| Offender Notification and Warning                          |                      |                |
| Most Serious Offense/Persistent Offender                   | .393                 | II-175         |
| Offender Score Calculation                                 |                      |                |
| Burglary (effective through 6/30/2001)                     | .360(10),(15)        | II-160, II-161 |
| <i>Burglary (effective 7/1/2001)</i>                       | .360(10),(15)        | II-166, II-166 |
| Drug (effective through 6/30/2001)                         | .360(12)             | II-160         |
| <i>Drug (effective 7/1/2001)</i>                           | .360(12)             | II-166         |
| Escape (effective through 6/30/2001)                       | .360(14)             | II-161         |
| <i>Escape (effective 7/1/2001)</i>                         | .360(14)             | II-166         |
| Multiple Current Convictions (effective through 6/30/2001) | .400(1)(a)           | II-176         |
| <i>Multiple Current Convictions (effective 7/1/2001)</i>   | .400(1)(a)           | II-179         |
| Multiple Prior Convictions (effective through 6/30/2001)   | .360(5)              | II-160         |
| <i>Multiple Prior Convictions (effective 7/1/2001)</i>     | .360(5)              | II-165         |
| Nonviolent Offense (effective through 6/30/2001)           | .360(7)              | II-160         |
| <i>Nonviolent Offense (effective 7/1/2001)</i>             | .360(7)              | II-166         |
| Out-of-state Convictions (effective through 6/30/2001)     | .360(3)              | II-159         |
| <i>Out-of-state Convictions (effective 7/1/2001)</i>       | .360(3)              | II-165         |
| Prior Juvenile Convictions (effective through 6/30/2001)   | .360                 | II-159         |
| <i>Prior Juvenile Convictions (effective 7/1/2001)</i>     | .360                 | II-165         |
| Rounding Down (effective through 6/30/2001)                | .360                 | II-159         |
| <i>Rounding Down (effective 7/1/2001)</i>                  | .360                 | II-165         |
| Serious Traffic Convictions (effective through 6/30/2001)  | .360(11)             | II-160         |
| <i>Serious Traffic Convictions (effective 7/1/2001)</i>    | .360(11)             | II-166         |
| Serious Violent Convictions (effective through 6/30/2001)  | .360(9)              | II-160         |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page           |
|---|----------------------|----------------|
| Serious Violent Convictions (effective 7/1/2001)                          | .360(9)              | II-166         |
| Sex Offender (effective through 6/30/2001)                                | .360(16)             | II-161         |
| <i>Sex Offender (effective 7/1/2001)</i>                                  | .360(16)             | II-166         |
| Status Point (effective through 6/30/2001)                                | .360(17)             | II-161         |
| <i>Status Point (effective 7/1/2001)</i>                                  | .360(17)             | II-161         |
| Traffic Offenses (effective through 6/30/2001)                            | .360(11)             | II-160         |
| <i>Traffic Offenses (effective 7/1/2001)</i>                              | .360(11)             | II-166         |
| Vehicular Homicide (effective through 6/30/2001)                          | .360(11)             | II-160         |
| <i>Vehicular Homicide (effective through 7/1/2001)</i>                    | .360(11)             | II-166         |
| Violent Offense (effective through 6/30/2001)                             | .360(8)              | II-160         |
| <i>Violent Offense (effective 7/1/2001)</i>                               | .360(8)              | II-166         |
| Wash Out (effective through 6/30/2001)                                    | .360(2)              | II-159         |
| <i>Wash Out (effective 7/1/2001)</i>                                      | .360(2)              | II-165         |
| Willful Failure to Return (effective through 6/30/2001)                   | .360(13)             | II-161         |
| <i>Willful Failure to Return (effective 7/1/2001)</i>                     | .360(13)             | II-166         |
| Offense Seriousness Level   | .320,.350            | II-150, II-159 |
| Outside Sentence Range  |                      |                |
| Aggravating Factors (effective through 6/30/2001)                         | .390(2)              | II-170         |
| <i>Aggravating Factors (effective 7/1/2001)</i>                           | .390(2)              | II-173         |
| Appeals   | .210                 | II-135         |
| Drug Offender Sentencing Alternative (DOSA) (effective through 6/30/2001) | .120(6)              | II-66          |
| <i>Drug Offender Sentencing Alternative (DOSA) (effective 7/1/2001)</i>   | .660                 | II-194         |
| Findings of Fact and Conclusions of Law (effective through 6/30/2001)     | .120(3)              | II-65          |
| <i>Findings of Fact and Conclusions of Law (effective 7/1/2001)</i>       | .390                 | II-172         |
| Substantial and Compelling Reasons (effective through 6/30/2001)          | .120(2)              | II-65          |
| <i>Substantial and Compelling Reasons (effective 7/1/2001)</i>            | .390                 | II-172         |
| Overcrowding  |                      |                |
| Board of Prison Terms and Paroles   | .160(2)              | II-116         |
| Clemency and Pardons Board  | .165(2)              | II-117         |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject  | Section of 9.94A RCW | Page                 |
|--|----------------------|----------------------|
| Emergency Meetings                                     | .160(1),.165(1)      | II-116, II-116       |
| Jail   | .165                 | II-116               |
| Prison   | .160                 | II-116               |
| Sentencing Guidelines Commission                       | .160(1),.165(1)      | II-116, II-116       |
| Pardons (effective through 6/30/2001)                  | .150(7)              | II-110               |
| <i>Pardons (effective 7/1/2001)</i>                    | .150(7)              | <i>II-112</i>        |
| Emergency  | .165(2)              | II-117               |
| Petition to Clemency and Pardons Board                 | .260                 | II-138               |
| Partial Confinement                                    |                      |                      |
| Alternative Conversions                                | .380                 | II-168               |
| Definition (effective through 6/30/2001)               | .030(28),.180        | II-41, II-118        |
| <i>Definition (effective 7/1/2001)</i>                 | .030(30),.180        | <i>II-51, II-118</i> |
| Served in Home Detention (effective through 6/30/2001) | .120(22)             | II-74                |
| <i>Served in Home Detention (effective 7/1/2001)</i>   | .120(10)             | <i>II-90</i>         |
| Reimbursement to State (effective through 6/30/2001)   | .190(2)              | II-120               |
| <i>Reimbursement to State (effective 7/1/2001)</i>     | .190(2)              | <i>II-121</i>        |
| Served in Work Crew (effective through 6/30/2001)      | .120(22)             | II-74                |
| <i>Served in Work Crew (effective 7/1/2001)</i>        | .120(10)             | <i>II-90</i>         |
| Served in Work Release (effective through 6/30/2001)   | .120(22)             | II-74                |
| <i>Served in Work Release (effective 7/1/2001)</i>     | .120(10)             | <i>II-90</i>         |
| Payroll Deductions (See Legal Financial Obligations)   |                      |                      |
| Employer Rights and Responsibilities                   | .200020              | II-125               |
| Maximum Amount Withheld                                | .200015              | II-124               |
| Quash, Modify or Terminate                             | .200025              | II-125               |
| Persistent Offenders                                   |                      |                      |
| Mandatory Minimum (effective through 6/30/2001)        | .120(4)              | II-65                |
| <i>Mandatory Minimum (effective 7/1/2001)</i>          | .560                 | <i>II-192</i>        |
| Definition (effective through 6/30/2001)               | .030(29)             | II-41                |
| <i>Definition (effective 7/1/2001)</i>                 | .030(31)             | <i>II-51</i>         |
| Finding and Intent                                     | .392                 | II-174               |
| Petition for Sentence Review                           | .210(7)              | II-136               |
| Plea Agreement Options                                 | .080                 | II-60                |
| Plea Agreement Hearing                                 | .100                 | II-61                |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b>            |
|--|-----------------------------|------------------------|
| Plea Agreement as Public Record                          | .103                        | II-61                  |
| Post Release Supervision                                 |                             |                        |
| Definition (effective through 6/30/2001)                 | .030(30)                    | II-41                  |
| <i>Definition (effective 7/1/2001)</i>                   | .030(32)                    | II-51                  |
| Violation  | .175                        | II-117                 |
| Preponderance of Evidence (effective through 6/30/2001)  | .110,.200(3),.370           | II-63, II-122, II-167  |
| <i>Preponderance of Evidence (effective 7/1/2001)</i>    | .110,.200(3),.370           | II-63, II-122 , II-167 |
| Presentence Reports                                      | .110                        | II-63                  |
| Presumptive Sentence Range (effective through 6/30/2001) | .370                        | II-167                 |
| <i>Presumptive Sentence Range (effective 7/1/2001)</i>   | .370                        | II-167                 |
| Prior Conviction (effective through 6/30/2001)           | .360(1)                     | II-159                 |
| <i>Prior Conviction (effective 7/1/2001)</i>             | .360(1)                     | II-165                 |
| Prosecuting Standards (effective through 6/30/2001)      | .440,.450,.460              | II-181, II-192, II-192 |
| <i>Prosecuting Standards (effective 7/1/2001)</i>        | .440,.450,.460              | II-187, II-192, II-192 |
| Protected Area Enhancement (effective through 6/30/2001) | .310(6)                     | II-143                 |
| <i>Protected Area Enhancement (effective 7/1/2001)</i>   | .310(6)                     | II-150                 |
| Purposes of Guidelines                                   | .010                        | II-37                  |
| Rape in the First Degree                                 |                             |                        |
| Mandatory Minimum (effective through 6/30/2001)          | .120(4)                     | II-65                  |
| <i>Mandatory Minimum (effective 7/1/2001)</i>            | .590(1)(c)                  | II-193                 |
| Real Facts Policy (effective through 6/30/2001)          | .370                        | II-167                 |
| <i>Real Facts Policy (effective 7/1/2001)</i>            | .370                        | II-167                 |
| Release of Information Concerning Sex Offenders          | .153                        | II-113                 |
| Immunity from Liability                                  | .152                        | II-113                 |
| Release Pending Appeal                                   | .210(3)                     | II-135                 |
| Residential Burglary (effective through 6/30/2001)       | .360(15)                    | II-161                 |
| <i>Residential Burglary (effective 7/1/2001)</i>         | .360(15)                    | II-166                 |
| Restitution  |                             |                        |
| Definition (effective through 6/30/2001)                 | .030(31)                    | II-41                  |
| <i>Definition (effective 7/1/2001)</i>                   | .030(33)                    | II-51                  |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject  | Section of 9.94A RCW      | Page                  |
|--|---------------------------|-----------------------|
| Fraud or Deceptive Practice (effective through 6/30/2001)                    | .142(5)                   | II-103                |
| <i>Fraud or Deceptive Practice (effective 7/1/2001)</i>                      | .142(8)                   | II-104                |
| Limitations and Considerations for Restitution (effective through 6/30/2001) | .142(1)                   | II-101                |
| <i>Limitations and Considerations for Restitution (effective 7/1/2001)</i>   | .142(1)                   | II-103                |
| Maximum Term (effective through 6/30/2001)                                   | .142(1)                   | II-101                |
| <i>Maximum Term (effective 7/1/2001)</i>                                     | .142(1)                   | II-103                |
| Modification (effective through 6/30/2001)                                   | .142(1)                   | II-101                |
| <i>Modification (effective 7/1/2001)</i>                                     | .142(1)                   | II-103                |
| Payment (effective through 6/30/2001)  | .120(23)                  | II-74                 |
| <i>Payment (effective 7/1/2001)</i>  | .120(23)                  | II-74                 |
| Sentencing Decision (effective through 6/30/2001)                            | .120(19)                  | II-74                 |
| <i>Sentencing Decision (effective 7/1/2001)</i>                              | .120(7)                   | II-90                 |
| Supervision (effective through 6/30/2001)                                    | .120(15),.140(1), .142(1) | II-73, II-98, II-101  |
| <i>Supervision (effective 7/1/2001)</i>                                      | 720(1),.140(1),.142(1)    | II-201,II-100, II-103 |
| Time for Hearing (effective through 6/30/2001)                               | .140(1),.142(1)           | II-98, II-101         |
| <i>Time for Hearing (effective 7/1/2001)</i>                                 | .140(1),.142(1)           | II-100, II-103        |
| Uncharged Crimes (effective through 6/30/2001)                               | .140(2),.142(2)           | II-98, II-102         |
| <i>Uncharged Crimes (effective 7-1-2001)</i>                                 | .140(5),.142(5)           | II-100 , II-104       |
| Restoration of Civil Rights  | .220(3)                   | II-137                |
| Reversal of Sentence   | .210(4)(a),(b)            | II-136, II-136        |
| Review of Sentence   | .210(5)                   | II-136                |
| Risk Assessment  |                           |                       |
| Definition (effective through 6/30/2001)                                     | .030(32)                  | II-41                 |
| <i>Definition (effective 7/1/2001)</i>                                       | .030(34)                  | II-51                 |
| Rounding of Offender Score (effective through 6/30/2001)                     | .360                      | II-159                |
| <i>Rounding of Offender Score (effective 7/1/2001)</i>                       | .360                      | II-165                |
| Same Criminal Conduct (effective through 6/30/2001)                          | .400(1)(a)                | II-176                |
| <i>Same Criminal Conduct (effective 7/1/2001)</i>                            | .400(1)(a)                | II-179                |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>  | <b>Section of 9.94A RCW</b> | <b>Page</b>   |
|---|-----------------------------|---------------|
| School Zone Enhancement (effective through 6/30/2001)                     | .310(6)                     | II-143        |
| <i>School Zone Enhancement (effective 7/1/2001)</i>                       | .310(6)                     | II-150        |
| Scoring (effective through 6/30/2001)                                     | .360(5)                     | II-160        |
| <i>Scoring (effective 7/1/2001)</i>                                       | .360(5)                     | II-165        |
| Search and Seizure Based on Reasonable Cause                              | .195                        | II-121        |
| Sentence Range  |                             |               |
| Definition (effective through 6/30/2001)                                  | .030(35)                    | II-42         |
| <i>Definition (effective 7/1/2001)</i>                                    | .030(39)                    | II-52         |
| Departure (effective through 6/30/2001)                                   | .120(2)                     | II-65         |
| <i>Departure (effective 7/1/2001)</i>                                     | .390                        | II-172        |
| Drug Offender Sentencing Alternative (DOSA) (effective through 6/30/2001) | .120(6)                     | II-66         |
| <i>Drug Offender Sentencing Alternative (DOSA) (effective 7/1/2001)</i>   | .660                        | II-194        |
| First-time Offender (effective through 6/30/2001)                         | .120(5)                     | II-65         |
| <i>First-time Offender (effective 7/1/2001)</i>                           | .650                        | II-193        |
| Mandatory Minimums (effective through 6/30/2001)                          | .120(4)                     | II-65         |
| <i>Mandatory Minimums (effective 7/1/2001)</i>                            | .590                        | II-193        |
| Maximum Sentence (effective through 6/30/2001)                            | .120(14),.420               | II-73, II-181 |
| <i>Maximum Sentence (effective 7/1/2001)</i>                              | .120(5),.420                | II-89, II-181 |
| Noncompliance with Sentence   | .200                        | II-122        |
| Outside Standard Range (effective through 6/30/2001)                      | .120(2),.120(3)             | II-65, II-65  |
| <i>Outside Standard Range (effective 7/1/2001)</i>                        | .120(1), .390               | II-79, II-172 |
| Presumptive Sentence Range (effective through 6/30/2001)                  | .370                        | II-167        |
| <i>Presumptive Sentence Range (effective 7/1/2001)</i>                    | .370                        | II-167        |
| Revision  | .070                        | II-60         |
| Sex Offender Under SSOSA (effective through 6/30/2001)                    | .120(8)(a)(ii)              | II-68         |
| <i>Sex Offender Under SSOSA (effective 7/1/2001)</i>                      | .670                        | II-195        |
| Sentence Within Standard Range (effective through 6/30/2001)              | .120(1)                     | II-65         |



## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page           |
|---|----------------------|----------------|
| <i>Sentence Within Standard Range (effective 7/1/2001)</i>          | .120(2)(a)(i)        | II-82          |
| Unranked Crimes (effective through 6/30/2001)                       | .120(7)              | II-67          |
| <i>Unranked Crimes (effective 7/1/2001)</i>                         | .120(2)(b)           | II-79          |
| Sentences Served  |                      |                |
| Concurrent (effective through 6/30/2001)                            | .400(1)(a)           | II-176         |
| <i>Concurrent (effective 7/1/2001)</i>                              | .400(1)(a)           | II-179         |
| Consecutive (effective through 6/30/2001)                           | .400(1)(b)           | II-176         |
| <i>Consecutive (effective 7/1/2001)</i>                             | .400(1)(b)           | II-179         |
| Consecutive Days (effective through 6/30/2001)                      | .120(12)             | II-72          |
| <i>Consecutive Days (effective 7/1/2001)</i>                        | .120(3)              | II-88          |
| Intermittent Days (effective through 6/30/2001)                     | .120(12)             | II-72          |
| <i>Intermittent Days (effective 7/1/2001)</i>                       | .120(3)              | II-88          |
| Greater than One Year (effective through 6/30/2001)                 | .190                 | II-120         |
| <i>Greater than One Year (effective 7/1/2001)</i>                   | .190                 | II-121         |
| Less than One Year (effective through 6/30/2001)                    | .190                 | II-120         |
| <i>Less than One Year (effective 7/1/2001)</i>                      | .190                 | II-121         |
| Noncompliance with Sentence   | .200                 | II-122         |
| State and Local Sentence Combinations (effective through 6/30/2001) | .190(3)              | II-120         |
| <i>State and Local Sentence Combinations (effective 7/1/2001)</i>   | .190(3)              | II-121         |
| Suspended Sentences Abolished (effective through 6/30/2001)         | .130                 | II-93          |
| <i>Suspended Sentences Abolished (effective 7/1/2001)</i>           | .130                 | II-93          |
| Sentencing Grid (effective through 6/30/2001)                       | .310(1)              | II-150         |
| <i>Sentencing Grid (effective 7/1/2001)</i>                         | .310(1)              | II-156         |
| Sentencing Guidelines Commission                                    |                      |                |
| Clearing House and Information Center(effective through 6/30/2001)  | .040                 | II-54          |
| <i>Clearing House and Information Center (effective 7/1/2001)</i>   | .040                 | II-56          |
| Definition (effective through 6/30/2001)                            | .030(2)              | II-38          |
| <i>Definition (effective 7/1/2001)</i>                              | .030(2)              | II-48          |
| Emergency Meetings  | .160(1),.165(1)      | II-116, II-116 |
| Membership  | .060                 | II-58          |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page           |
|---|----------------------|----------------|
| Report on Sentencing Practices  | .105                 | II-62          |
| Sentence Excessive or Too Lenient (effective through 6/30/2001)       | .210(4)(b)           | II-136         |
| <i>Sentence Excessive or Too Lenient (effective 7/1/2001)</i>         | .210(4)(b)           | II-136         |
| Sentence Violation (See Noncompliance)                                |                      |                |
| Sentencing Hearing  |                      |                |
| Continuance   | .110                 | II-63          |
| Court's Considerations (effective through 6/30/2001)                  | .110,.370            | II-63, II-167  |
| <i>Court's Considerations (effective 7/1/2001)</i>                    | .110, .370           | II-63, II-167  |
| Criminal History - Preponderance of the Evidence                      | .100,.110            | II-61, II-63   |
| Evidentiary Hearing (effective through 6/30/2001)                     | .370                 | II-167         |
| <i>Evidentiary Hearing (effective 7/1/2001)</i>                       | .370                 | II-167         |
| Findings of Fact and Conclusions of Law (effective through 6/30/2001) | .110,.120(3)         | II-63, II-65   |
| <i>Findings of Fact and Conclusions of Law (effective 7/1/2001)</i>   | .110,.670            | II-63, II-195  |
| Time Limitations, 40-Day Rule   | .110                 | II-63          |
| Modification of Sentence  | .200(1)              | II-122         |
| Participants  | .110                 | II-63          |
| Plea Agreement  | .080,.090,.100       | II-60, II-61   |
|   |                      | II-61          |
| Plea Agreement (effective through 6/30/2001)                          | .103,.370            | II-61, II-167  |
| <i>Plea Agreement (effective 7/1/2001)</i>                            | .103,.370            | II-61, II-167  |
| Presentence Report (effective through 6/30/2001)                      | .110,.370            | II-63, II-150  |
| <i>Presentence Report (effective 7/1/2001)</i>                        | .110,.370            | II-63, II-167  |
| Real Facts Policy (effective through 6/30/2001)                       | .370(2)              | II-167         |
| <i>Real Facts Policy (effective 7/1/2001)</i>                         | .370(2)              | II-167         |
| Record  | .110                 | II-63          |
| Transfer of Record  | .110                 | II-63          |
| Seriousness Level   | .320,.350            | II-150, II-159 |
| Serious Traffic Offense   |                      |                |
| Definition (effective through 6/30/2001)                              | .030(33)             | II-41          |
| <i>Definition (effective 7/1/2001)</i>                                | .030(35)             | II-52          |
| Offender Score (effective through 6/30/2001)                          | .360(11)             | II-160         |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b>  |
|--|-----------------------------|--------------|
| <i>Offender Score (effective 7/1/2001)</i>                   | .360(11)                    | II-166       |
| Serious Violent Offense                                      |                             |              |
| Definition (effective through 6/30/2001)                     | .030(34)                    | II-42        |
| <i>Definition (effective 7/1/2001)</i>                       | .030(36)                    | II-52        |
| Offender Score (effective through 6/30/2001)                 | .360(9)                     | II-160       |
| <i>Offender Score (effective 7/1/2001)</i>                   | .360(9)                     | II-166       |
| Sentencing (Multiple Offenses) (effective through 6/30/2001) | .400(1)(b)                  | II-176       |
| <i>Sentencing (Multiple Offenses) (effective 7/1/2001)</i>   | .400(1)(b)                  | II-179       |
| Sex Offense  |                             |              |
| Definition (effective through 6/30/2001)                     | .030(36)                    | II-42        |
| <i>Definition (effective 7/1/2001)</i>                       | .030(37)                    | II-52        |
| Sex Offender   |                             |              |
| Community Benefit Standard (effective through 6/30/2001)     | .120(8)(a)(ii)              | II-68        |
| <i>Community Benefit Standard (effective 7/1/2001)</i>       | .670                        | II-195       |
| Confinement (effective through 6/30/2001)                    | .120(8)(a)(ii)              | II-68        |
| <i>Confinement (effective 7/1/2001)</i>                      | .670(5)(a)                  | II-197       |
| Conversion of Sentence (effective through 6/30/2001)         | .120(8)(b)                  | II-67        |
| <i>Conversion of Sentence (effective 7/1/2001)</i>           | .670(4)(b)                  | II-196       |
| Costs of Victim's Counseling (effective through 6/30/2001)   | .120(8)(a)(ii)              | II-68        |
| <i>Costs of Victim's Counseling (effective 7/1/2001)</i>     | .670(5)(h)                  | II-197       |
| Credit for Time Served (effective through 6/30/2001)         | .120(8)(a)(vi)              | II-69        |
| <i>Credit for Time Served (effective 7/1/2001)</i>           | .670(10)                    | II-197       |
| DOC Treatment Program (effective through 6/30/2001)          | .120(8)(c)                  | II-67        |
| <i>DOC Treatment Program (effective 7/1/2001)</i>            | .800(1)                     | II-202       |
| Employment or Occupation (effective through 6/30/2001)       | .120(8)(a)(ii)              | II-68        |
| <i>Employment or Occupation (effective 7/1/2001)</i>         | .120(8)(a)(ii)              | II-90        |
| Evaluation (effective through 6/30/2001)                     | .120(8)(a)(i),(b)           | II-67, II-67 |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject  | Section of 9.94A RCW          | Page                   |
|--|-------------------------------|------------------------|
| <i>Evaluation (effective 7/1/2001)</i>                                   | .670(3)                       | II-196                 |
| Geographic Boundaries (effective through 6/30/2001)                      | .120(8)(a)(ii)                | II-68                  |
| <i>Geographic Boundaries (effective 7/1/2001)</i>                        | .670(5)(d)                    | II-197                 |
| Hospital Option (effective through 6/30/2001)                            | .120(8)(b)                    | II-67                  |
| <i>Hospital Option (effective 7/1/2001)</i>                              | .670(3)                       | II-196                 |
| Inpatient and Outpatient Treatment (effective through 6/30/2001)         | .120(8)(a)(ii)(B)             | II-68                  |
| <i>Inpatient and Outpatient Treatment (effective 7/1/2001)</i>           | .670(4)(b)                    | II-196                 |
| Location of Treatment Program  | .123                          | II-91                  |
| Noncompliance with Conditions of Treatment (effective through 6/30/2001) | .120(8)(a)(v)                 | II-68                  |
| <i>Noncompliance with Conditions of Treatment (effective 7/1/2001)</i>   | .670(9)                       | II-197                 |
| Notification Required at Release or Escape                               | .151,.155                     | II-113, II-114         |
| Offender Score Rules (effective through 6/30/2001)                       | .360(16)                      | II-161                 |
| <i>Offender Score Rules (effective 7/1/2001)</i>                         | .360(16)                      | II-166                 |
| Presentence Report   | .110                          | II-63                  |
| Report to Corrections Officer (effective through 6/30/2001)              | .120(8)(a)(ii)                | II-68                  |
| <i>Report to Corrections Officer (effective 7/1/2001)</i>                | .670(4)(b)                    | II-196                 |
| SSOSA Eligibility (effective through 6/30/2001)                          | .120(8)(a)(i)                 | II-67                  |
| <i>SSOSA Eligibility (effective 7/1/2001)</i>                            | .670(2)                       | II-195                 |
| Suspended Sentence (effective through 6/30/2001)                         | .120(8)(a)(ii)                | II-68                  |
| <i>Suspended Sentence (effective 7/1/2001)</i>                           | .670                          | II-195                 |
| Treatment Provider (effective through 6/30/2001)                         | .120(8)(a)(vi),(vii)          | II-69, II-69           |
| <i>Treatment Provider (effective 7/1/2001)</i>                           | .670(1)(a), .670(7), .670(11) | II-195, II-197, II-197 |
| Sexual Motivation  |                               |                        |
| Aggravating Circumstance (effective through 6/30/2001)                   | .390(2)(f)                    | II-171                 |
| <i>Aggravating Circumstance (effective 7/1/2001)</i>                     | .390(2)(f)                    | II-173                 |
| Charging   | .127                          | II-92                  |
| Definition (effective through 6/30/2001)                                 | .030(37)                      | II-42                  |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>   | <b>Section of 9.94A RCW</b> | <b>Page</b>   |
|--|-----------------------------|---------------|
| <i>Definition (effective 7/1/2001)</i>   | .030(38)                    | II-52         |
| Solicitation (See Anticipatory Offenses)                                       |                             |               |
| Stipulation to Facts to Establish a Higher Crime (effective through 6/30/2001) | .370                        | II-167        |
| <i>Stipulation to Facts to Establish a Higher Crime (effective 7/1/2001)</i>   | .370                        | II-167        |
| Substantial and Compelling Reasons (effective through 6/30/2001)               | .120(2),(7)                 | II-65, II-67  |
| <i>Substantial and Compelling Reasons (effective 7/1/2001)</i>                 | .120(2), .390               | II-79, II-172 |
| Suspended Sentence Abolished (effective through 6/30/2001)                     | .130                        | II-93         |
| <i>Suspended Sentence Abolished (effective 7/1/2001)</i>                       | .130                        | II-93         |
| Sex Offender Exception (effective through 6/30/2001)                           | .120(8)(a)(ii), .130        | II-68, II-93  |
| <i>Sex Offender Exception (effective 7/1/2001)</i>                             | .670, .130                  | II-195, II-93 |
| Tables   |                             |               |
| Sentencing Grid Table 1 (effective through 6/30/2001)                          | .310(1)                     | II-150        |
| <i>Sentencing Grid Table 1 (effective 7/1/2001)</i>                            | .310(1)                     | II-156        |
| Seriousness Level Table 2  | .320                        | II-150        |
| Total Confinement (See Confinement)(effective through 6/30/2001)               | .030(38)                    | II-42         |
| <i>Total Confinement (See Confinement)(effective 7/1/2001)</i>                 | .030(41)                    | II-52         |
| Tolling  | .170                        | II-117        |
| Traffic Convictions  |                             |               |
| Definition (effective through 6/30/2001)                                       | .030(21)                    | II-39         |
| <i>Definition (effective 7/1/2001)</i>   | .030(22)                    | II-49         |
| Offender Score (effective through 6/30/2001)                                   | .360(11)                    | II-160        |
| <i>Offender Score (effective 7/1/2001)</i>                                     | .360(11)                    | II-166        |
| Transition Training  |                             |               |
| Definition (effective through 6/30/2001)                                       | .030(39)                    | II-42         |
| <i>Definition (effective through 7/1/2001)</i>                                 | .030(42)                    | II-52         |
| Work Ethic Camp (effective through 6/30/2001)                                  | .137(5)                     | II-96         |
| <i>Work Ethic Camp (effective 7/1/2001)</i>                                    | .137(5)                     | II-98         |
| Treatment  |                             |               |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject  | Section of 9.94A RCW             | Page                             |
|--|----------------------------------|----------------------------------|
| First-time Offender (effective through 6/30/2001)                        | .120(5)(a)(ii),<br>.120(5)(b)(i) | II-65, II-65                     |
| <i>First-time Offender (effective 7/1/2001)</i>                          | .650(2)(b),.650(3)(a)            | <i>II-193, II-194</i>            |
| Chemical Dependency Finding  | .129                             | II-93                            |
| Drug Offender Sentencing Alternative (DOSA)(effective through 6/30/2001) | .120(6)                          | II-66                            |
| <i>Drug Offender Sentencing Alternative (DOSA)(effective 7/1/2001)</i>   | .660(2)                          | <i>II-194</i>                    |
| Sex Offender with SSOSA (effective through 6/30/2001)                    | .120(8)(a)(ii)(B)                | II-68                            |
| <i>Sex Offender with SSOSA (effective 7/1/2001)</i>                      | .670(4)                          | <i>II-196</i>                    |
| Uncharged Crimes, Restitution (effective through 6/30/2001)              | .140(2),.142(2)                  | II-98, II-102                    |
| <i>Uncharged Crimes, Restitution (effective 7/1/2001)</i>                | .140(2),.142(2)                  | <i>II-100, II-103</i>            |
| Under Sentence of Another Conviction (effective through 6/30/2001)       | .400(2),(3)                      | II-177, II-177                   |
| <i>Under Sentence of Another Conviction (effective 7/1/2001)</i>         | .400(2),(3)                      | <i>II-180, II-180</i>            |
| Unranked Crimes (effective through 6/30/2001)                            | .120(7)                          | II-67                            |
| <i>Unranked Crimes (effective 7/1/2001)</i>                              | .120(2)(b)                       | <i>II-79</i>                     |
| Vacation of Conviction Record  | .230                             | II-137                           |
| Vehicular Homicide   |                                  |                                  |
| Criminal History (effective through 6/30/2001)                           | .360(11)                         | II-160                           |
| <i>Criminal History (effective 7/1/2001)</i>                             | .360(11)                         | <i>II-166</i>                    |
| Definition as Violent Offense (effective through 6/30/2001)              | .030(41)                         | II-42                            |
| <i>Definition as Violent Offense (effective 7/1/2001)</i>                | .030(41)                         | <i>II-52</i>                     |
| Victim   |                                  |                                  |
| Definition (effective through 6/30/2001)                                 | .030(40)                         | II-42                            |
| <i>Definition (effective 7/1/2001)</i>                                   | .030(40)                         | <i>II-52</i>                     |
| Plea Agreements (effective through 6/30/2001)                            | .080,.090,.040                   | II-60, II-61,<br>II-54           |
| <i>Plea Agreements (effective 7/1/2001)</i>                              | .080,.090,.040                   | II-60, II-61,<br><i>II-56</i>    |
| Statements   | .110                             | II-63                            |
| Victim and Witness Notification  | .156,.157,.158, .159             | II-115, II-116<br>II-116, II-116 |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| Subject   | Section of 9.94A RCW | Page           |
|---|----------------------|----------------|
| Violations (See Noncompliance with Sentence)              |                      |                |
| Violent Offense   |                      |                |
| Definition (effective through 6/30/2001)                  | .030(41)             | II-42          |
| <i>Definition (effective 7/1/2001)</i>                    | .030(44)             | II-53          |
| Notification upon Release or Escape                       | .155                 | II-114         |
| Offense Score (effective through 6/30/2001)               | .360(8)              | II-160         |
| <i>Offense Score (effective 7/1/2001)</i>                 | .360(8)              | II-166         |
| "Wash Out" of Prior Felonies                              |                      |                |
| Adult and Juvenile (effective through 6/30/2001)          | .360(2)              | II-159         |
| <i>Adult and Juvenile (effective 7/1/2001)</i>            | .360(2)              | II-165         |
| Weapons, Deadly   |                      |                |
| Accomplice  | .125                 | II-91          |
| Additions to Sentence Range (effective through 6/30/2001) | .370                 | II-167         |
| <i>Additions to Sentence Range (effective 7/1/2001)</i>   | .370                 | II-167         |
| Definition  | .125                 | II-91          |
| Findings of Fact or Special Verdict                       | .125                 | II-91          |
| Firearms (effective through 6/30/2001)                    | .310(3)              | II-142         |
| <i>Firearms (effective 7/1/2001)</i>                      | .310(3)              | II-148         |
| Sentencing Grid Provision (effective through 6/30/2001)   | .310(3), .310(4)     | II-142, II-142 |
| <i>Sentencing Grid Provision (effective 7/1/2001)</i>     | .310(3), .310(4)     | II-148, II-148 |
| Withdrawal of Guilty Pleas                                | .230(1)              | II-137         |
| Work Crew   |                      |                |
| Definition (effective through 6/30/2001)                  | .030(42)             | II-42          |
| <i>Definition (effective 7/1/2001)</i>                    | .030(45)             | II-53          |
| Requirements (effective through 6/30/2001)                | .135                 | II-94          |
| <i>Requirements (effective 7/1/2001)</i>                  | .135                 | II-95          |
| Violation of Rules (effective through 6/30/2001)          | .180(2)              | II-118         |
| <i>Violation of Rules (effective 7/1/2001)</i>            | .180(2)              | II-118         |
| Work Ethic Camp Program – Eligibility                     |                      |                |
| Sentencing  |                      |                |
| Definition (effective through 6/30/2001)                  | .030(43)             | II-43          |
| <i>Definition (effective 7/1/2001)</i>                    | .030(46)             | II-53          |
| Eligibility (effective through 6/30/2001)                 | .137(1)              | II-96          |
| <i>Eligibility (effective 7/1/2001)</i>                   | .137(1)              | II-97          |
| Sentencing (effective through 6/30/2001)                  | .137(2)              | II-96          |

## SECTION II - SENTENCING REFORM ACT INDEX (continued)

| <b>Subject</b>                                      | <b>Section of 9.94A RCW</b>   | <b>Page</b>              |
|---|-------------------------------|--------------------------|
| <i>Sentencing (effective 7/1/2001)</i>              | .137(2)                       | II-97                    |
| Assignment to Program (effective through 6/30/2001) | .137(3)                       | II-96                    |
| <i>Assignment to Program (effective 7/1/2001)</i>   | .137(3)                       | II-97                    |
| Failure to Complete (effective through 6/30/2001)   | .137(4)                       | II-96                    |
| <i>Failure to Complete (effective 7/1/2001)</i>     | .137(4)                       | II-98                    |
| Length of Program (effective through 6/30/2001)     | .137(1)(b), (5)               | II-96, II-96             |
| <i>Length of Program (effective 7/1/2001)</i>       | .137(1)(b),(5)                | II-97, II-98             |
| Work Release  |                               |                          |
| Conditions (effective through 6/30/2001)            | .120(22),.150(6), .180(1)     | II-74, II-110,<br>II-118 |
| <i>Conditions (effective 7/1/2001)</i>              | .120(10), .150(6),<br>.180(1) | II-90, II-112<br>II-118  |
| Definition (effective through 6/30/2001)            | .030(44)                      | II-43                    |
| <i>Definition (effective 7/1/2001)</i>              | .030(47)                      | II-53                    |
| Violation of Rules                                  | .180(2)                       | II-118                   |



# CHAPTER 9.94A RCW SENTENCING REFORM ACT OF 1981

| Sections  | Page  |
|-----------|---|
| 9.94A.010 | Purpose. ....II-37  |
| 9.94A.015 | <i>Finding--Intent--2000 c 28</i> .....II-37  |
| 9.94A.020 | Short title. ....II-37  |
| 9.94A.030 | Definitions.....II-37   |
| 9.94A.031 | "Offender" and "defendant.".....II-53   |
| 9.94A.035 | Classification of felonies not in Title 9A RCW.....II-54  |
| 9.94A.040 | Sentencing guidelines commission--Established--<br>Powers and duties. ....II-54   |
| 9.94A.050 | Sentencing guidelines commission--Research staff--Data, information,<br>assistance--Bylaws--Salary of executive officer.....II-58 |
| 9.94A.060 | Sentencing guidelines commission--Membership--Appointments--<br>Terms of office--Expenses and compensation. ....II-58             |
| 9.94A.070 | Standard sentence ranges--Revisions or modifications--Submission to<br>legislature.....II-60                                      |
| 9.94A.080 | Plea agreements--Discussions--Contents of agreements. ....II-60   |
| 9.94A.090 | Plea agreements--Information to court--Approval or disapproval--Sentencing<br>judge not bound. ....II-61                          |
| 9.94A.100 | Plea agreements--Criminal history.....II-61   |
| 9.94A.103 | Plea agreements and sentences for certain offenders--<br>Public records.....II-61   |
| 9.94A.105 | Judicial records for sentences of certain offenders. ....II-62  |
| 9.94A.110 | Sentencing hearing--Presentencing procedures--Disclosure<br>of mental health services information. ....II-63                      |
| 9.94A.120 | Sentences. ....II-74  |
| 9.94A.123 | Legislative finding and intent--Commitment of felony sexual<br>offenders after July 1, 1987. ....II-91                            |
| 9.94A.125 | Deadly weapon special verdict--Definition. ....II-91  |
| 9.94A.127 | Sexual motivation special allegation--Procedures.....II-92  |
| 9.94A.128 | Methamphetamine--Manufacturing with child on<br>premises--Special allegation. ....II-93   |
| 9.94A.129 | Chemical dependency. ....II-93  |
| 9.94A.130 | Power to defer or suspend sentences abolished--Exceptions. ....II-93  |
| 9.94A.132 | Specialized training. ....II-94   |
| 9.94A.135 | Offender work crews. ....II-94  |
| 9.94A.137 | Work ethic camp program--Eligibility--Sentencing. ....II-96   |
| 9.94A.140 | Restitution. ....II-98  |
| 9.94A.142 | Restitution--Application dates.....II-101   |
| 9.94A.145 | Legal financial obligations. ....II-105   |
| 9.94A.150 | Leaving correctional facility or release before expiration<br>of sentence prohibited--Exceptions.....II-109                       |
| 9.94A.151 | Sex offenders--Release from total confinement--Notification of<br>prosecutor. ....II-113  |
| 9.94A.152 | Sex offenders--Release of information--Immunity.....II-113  |
| 9.94A.153 | Sex offenders--Release of information. ....II-113   |
| 9.94A.154 | Drug offenders--Notice of release or escape.....II-113  |

**CHAPTER 9.94A RCW**  
**SENTENCING REFORM ACT OF 1981 (continued)**

| Sections     | Page   |
|--------------|--|
| 9.94A.155    | Prisoner escape, parole, release, placement, or furlough--<br>Notification procedures. ....II-114  |
| 9.94A.156    | Prisoner escape, release, or furlough--Homicide, violent, and<br>sex offenses--Rights of victims and witnesses. ....II-115   |
| 9.94A.157    | Prisoner escape, release, or furlough--Requests for notification. ....II-116   |
| 9.94A.158    | Prisoner escape, release, or furlough--Notification as<br>additional requirement. ....II-116   |
| 9.94A.159    | Prisoner escape, release, or furlough--Consequences<br>of failure to notify. ....II-116  |
| 9.94A.160    | Emergency due to inmate population exceeding correctional facility capacity.II-116   |
| 9.94A.165    | Emergency in county jails population exceeding capacity. ....II-116  |
| 9.94A.170    | Tolling of term of confinement, supervision. ....II-117  |
| 9.94A.175    | Postrelease supervision--Violations--Expenses. ....II-117  |
| 9.94A.180    | Term of partial confinement, work release, home detention.....II-118   |
| 9.94A.185    | Home detention--Conditions. ....II-118   |
| 9.94A.190    | Terms of more than one year or less than one year--Where served--<br>Reimbursement of costs.....II-120   |
| 9.94A.195    | Violation of condition or requirement of sentence--Arrest by<br>community corrections officer--Confinement in county jail. ....II-121  |
| 9.94A.200    | Noncompliance with condition or requirement of sentence--<br>Procedure--Penalty. ....II-122  |
| 9.94A.200005 | "Earnings," "disposable earnings," and "obligee" defined.....II-124  |
| 9.94A.200010 | Legal financial obligation--Notice of payroll deduction--<br>Issuance and content. ....II-124  |
| 9.94A.200015 | Legal financial obligations--Payroll deductions--Maximum<br>amounts withheld, apportionment.....II-124   |
| 9.94A.200020 | Legal financial obligations--Notice of payroll deduction--<br>Employer or entity rights and responsibilities.....II-125  |
| 9.94A.200025 | Motion to quash, modify, or terminate payroll deduction--<br>Grounds for relief. ....II-125  |
| 9.94A.200030 | Legal financial obligations--Order to withhold and deliver--<br>Issuance and contents.....II-126   |
| 9.94A.200035 | Legal financial obligations--Order to withhold and deliver--<br>Duties and rights of person or entity served. ....II-126   |
| 9.94A.200040 | Legal financial obligations--Financial institutions--Service on<br>main office or branch, effect--Collection actions against<br>community bank account, court hearing.....II-127 |
| 9.94A.200045 | Legal financial obligations--Notice of debt--Service or mailing--<br>Contents--Action on, when. ....II-128   |
| 9.94A.200050 | Legal financial obligations--Exemption from notice of payroll<br>deduction or order to withhold and deliver. ....II-128  |
| 9.94A.2001   | Legal financial obligations--Wage assignments--Petition or motion. ....II-129  |
| 9.94A.2002   | Legal financial obligations--Wage assignments--Answer.....II-129   |
| <br>         |  |
| Sections     | Page   |
| 9.94A.2003   | Legal financial obligations--Wage assignments--Amounts to be<br>withheld. ....II-129   |

**CHAPTER 9.94A RCW**  
**SENTENCING REFORM ACT OF 1981 (continued)**

|            |  |         |
|------------|--|---------|
| 9.94A.2004 | Legal financial obligations-- Wage assignments-- Rules. ....   | II- 130 |
| 9.94A.2005 | Legal financial obligations-- Wage assignments-- Employer responsibilities. ....                                 | II- 130 |
| 9.94A.2006 | Legal financial obligations-- Wage assignments-- Form and rules. ....  | II- 130 |
| 9.94A.2007 | Legal financial obligations-- Wage assignments-- Service. ....   | II- 130 |
| 9.94A.2008 | Legal financial obligations-- Wage assignments-- Hearing-- Scope of relief. ....                                 | II- 132 |
| 9.94A.2009 | Legal financial obligations-- Wage assignments-- Recovery of costs, attorneys' fees. ....                        | II- 132 |
| 9.94A.201  | Legal financial obligations-- Wage assignments-- Sentences imposed before July 1, 1989. ....                     | II- 132 |
| 9.94A.205  | Community custody-- Violations. ....   | II- 132 |
| 9.94A.207  | Community placement, custody violators-- Arrest, detention, financial responsibility. ....                       | II- 134 |
| 9.94A.210  | Which sentences appealable-- Procedure-- Grounds for reversal-- Written opinions. ....                           | II- 135 |
| 9.94A.220  | Discharge upon completion of sentence-- Certificate of discharge-- Obligations, counseling after discharge. .... | II- 137 |
| 9.94A.230  | Vacation of offender's record of conviction. ....  | II- 137 |
| 9.94A.250  | Clemency and pardons board-- Membership-- Terms-- Chairman-- Bylaws-- Travel expenses-- Staff. ....              | II- 138 |
| 9.94A.260  | Clemency and pardons board-- Petitions for review-- Hearing. ....  |         |
| 9.94A.270  | Offender supervision assessments. ....   | II- 139 |
| 9.94A.280  | Alien offenders. ....  | II- 140 |
| 9.94A.310  | Table 1-- Sentencing grid. ....  | II- 150 |
| 9.94A.320  | Table 2-- Crimes included within each seriousness level. ....  | II- 150 |

**RECOMMENDED SENTENCING GUIDELINES**

|           |   |         |
|-----------|---|---------|
| 9.94A.340 | Equal application. ....                                 | II- 159 |
| 9.94A.345 | Timing. ....  | II- 159 |
| 9.94A.350 | Offense seriousness level. ....                         | II- 159 |
| 9.94A.360 | Offender score. ....                                    | II- 159 |
| 9.94A.370 | Presumptive sentence. ....                              | II- 167 |
| 9.94A.380 | Alternatives to total confinement. ....                 | II- 168 |
| 9.94A.383 | Community custody. ....                                 | II- 169 |
| 9.94A.386 | Fines. ....   | II- 169 |
| 9.94A.390 | Departures from the guidelines. ....                    | II- 170 |
| 9.94A.392 | Findings and intent-- 1994 c 1. ....                    | II- 174 |
| 9.94A.393 | Offender notification and warning. ....                 | II- 175 |
| 9.94A.394 | Governor's powers. ....                                 | II- 175 |
| 9.94A.395 | Abused victim-- Resentencing for murder of abuser. .... | II- 175 |

| Sections  |  | Page   |
|-----------|--|--------|
| 9.94A.400 | Consecutive or concurrent sentences. ....                  | II-176 |
| 9.94A.410 | Anticipatory offenses. ....                                | II-180 |
| 9.94A.420 | Presumptive ranges that exceed the statutory maximum. .... | II-181 |

**CHAPTER 9.94A RCW**  
**SENTENCING REFORM ACT OF 1981 (continued)**  
**RECOMMENDED PROSECUTING STANDARDS**  
**FOR CHARGING AND PLEA DISPOSITIONS**

|           |  |               |
|-----------|--|---------------|
| 9.94A.430 | Introduction. ....   | II-181        |
| 9.94A.440 | Evidentiary sufficiency. ....  | II-181        |
| 9.94A.450 | Plea dispositions.....   | II-192        |
| 9.94A.460 | Sentence recommendations. ....   | II-192        |
| 9.94A.470 | Armed offenders. ....  | II-192        |
| 9.94A.560 | <i>Persistent offenders.....</i>   | <i>II-192</i> |
| 9.94A.590 | <i>Mandatory minimum terms.....</i>  | <i>II-193</i> |
| 9.94A.650 | <i>First-time offender waiver. ....</i>  | <i>II-193</i> |
| 9.94A.660 | <i>Drug offender sentencing alternative. ....</i>  | <i>II-194</i> |
| 9.94A.670 | <i>Special sex offender sentencing alternative.....</i>  | <i>II-195</i> |
| 9.94A.700 | <i>Community placement. ....</i>   | <i>II-198</i> |
| 9.94A.705 | <i>Community placement for specified offenders.....</i>  | <i>II-199</i> |
| 9.94A.710 | <i>Community custody for sex offenders.....</i>  | <i>II-199</i> |
| 9.94A.715 | <i>Community custody for specified offenders.....</i>  | <i>II-200</i> |
| 9.94A.720 | <i>Supervision of offenders.....</i>   | <i>II-201</i> |
| 9.94A.800 | <i>Sex offender treatment in correctional facility. ....</i>   | <i>II-202</i> |
| 9.94A.810 | <i>Transition and relapse prevention strategies.....</i>   | <i>II-203</i> |
| 9.94A.820 | <i>Sex offender treatment in the community.....</i>  | <i>II-203</i> |
| 9.94A.905 | Effective date of RCW 9.94A.080 through 9.94A.130, 9.94A.150<br>through 9.94A.230, 9.94A.250, 9.94A.260--Sentences<br>apply to felonies committed after June 30, 1984..... | II-203        |
| 9.94A.910 | Severability--1981 c 137. ....   | II-203        |
| 9.94A.920 | Headings and captions not law--2000 c 28.....  | II-204        |
| 9.94A.921 | Effective date--2000 c 28. ....  | II-204        |
| 9.94A.922 | Severability--2000 c 28. ....  | II-204        |

**NOTES:**

Juvenile disposition standards commission--Functions transferred to sentencing guidelines commission:  
RCW 13.40.005.

**RCW 9.94A.010 Purpose.** The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of reoffending by offenders in the community. [1999 c 196 § 1; 1981 c 137 § 1.]

*Comment*

*In 1983, the Legislature considered enumerating specific factors which could not be considered in sentencing the offender, including race, creed and gender. However, the Legislature decided that to list such factors could narrow the scope of their intent, which was to prohibit discrimination as to any element that does not relate to the crime or the previous record of the defendant. For this reason, the statute requires that the sentencing guidelines and prosecuting standards be applied equally "without discrimination."*

*The 1999 Legislature, enacting the Offender Accountability Act, established another purpose of the Sentencing Reform Act: to "reduce the risk of reoffending by offenders in the community." The Legislature also expanded upon the goal of making frugal use of state resources to promote frugal use of local governments' resources, as well.*

**RCW 9.94A.015 Finding--Intent--2000 c 28. (Effective July 1, 2001.)** *The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.*

*The legislature does not intend chapter 28, Laws of 2000 to make, and no provision of chapter 28, Laws of 2000 shall be construed as making, a substantive change in the sentencing reform act.*

*The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement. [2000 c 28 § 1.]*

**Technical correction bill--2000 c 28:** "If any amendments to RCW 9.94A.120, or any sections enacted or affected by chapter 28, Laws of 2000, are enacted in a 2000 legislative session that do not take cognizance of chapter 28, Laws of 2000, the code reviser shall prepare a bill for introduction in the 2001 legislative session that incorporates any such amendments into the reorganization adopted by chapter 28, Laws of 2000 and corrects any incorrect cross-references." [2000 c 28 § 45.]

**RCW 9.94A.020 Short title.** This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

**RCW 9.94A.030 Definitions. (Effective until July 1, 2001.)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.145, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department of corrections. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(5) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.120(11), as established by the sentencing guidelines commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

(6) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(7) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(9) "Confinement" means total or partial confinement as defined in this section.

(10) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(11) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to the provisions in RCW 38.52.430.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

(14) "Day fine" means a fine imposed by the sentencing judge that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(15) "Day reporting" means a program of enhanced supervision designed to monitor the defendant's daily activities and compliance with sentence conditions, and in which the defendant is required to report daily to a specific location designated by the department or the sentencing judge.

(16) "Department" means the department of corrections.

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(18) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(19) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(20) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(21) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(22) "Fines" means the requirement that the offender pay a specific sum of money over a

specific period of time to the court.

(23) "First-time offender" means any person who is convicted of a felony (a) not classified as a violent offense or a sex offense under this chapter, or (b) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(24) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(25) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under \*RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW



9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(26) "Nonviolent offense" means an offense which is not a violent offense.

(27) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(28) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(29) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection (29)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under subsection (29)(b)(i) only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under subsection (29)(b)(i) only when the offender was eighteen years of age or older when the offender committed the offense.

(30) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(31) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(32) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(33) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless

driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(34) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, manslaughter in the first degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(35) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(36) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW, other than \*\*RCW 9A.44.130(10), or RCW 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(37) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(38) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(39) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(40) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(41) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, drive-by shooting, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(42) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall have minimal negative impact on existing private

industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.205, are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (36) of this section are not eligible for the work crew program.

(43) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(44) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3. Prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

### Comment

*"Community Custody" was first defined in 1988 in relation to the community placement program. The 1996 Legislature amended the definition of "community custody" to include the status of persons sentenced under the Special Sex Offender Sentencing Alternative (see RCW 9.94A.120(8)).*

*The 1999 Legislature, enacting the Offender Accountability Act, extended community custody to apply to all sex offenses, all violent offenses, all crimes against persons (defined in RCW 9.94A.440) and all felony drug offenses (except DOSA sentences) committed on or after July 1, 2000. The term "community custody" replaced "community supervision," "community placement" and "post-release supervision." Offenders required to serve a period of community custody as part of the sentence will be supervised according to the risk they pose and may be subject to the imposition of affirmative conditions by sentencing courts (such as rehabilitative treatment), as long as such conditions are reasonably related to the circumstances of the offense, the risk of recidivism and community safety. The Department of Corrections may also impose affirmative conditions, as long as they are not in contravention of court orders. See RCW 9.94A.120(5)(b)(ii), (7), (11), (14), (15) and (16). Courts are permitted to impose affirmative conditions on sex offenders beyond their term of community custody.*

*"Community Custody Range" was defined by the 1999 Legislature as part of the Offender Accountability Act. The Sentencing Guidelines Commission was directed by the Legislature to formulate community custody ranges by December 31, 1999. The ranges became effective for eligible offenses committed on or after July 1, 2000. Future modifications of community custody ranges will require the enactment of a bill by the Legislature. See RCW 9.94A.040(5). Courts must sentence offenders to community custody for the period of the community custody range or*

*for the period of earned release time, whichever is longer. Offenders must remain on community custody for either the period of earned release or at least the minimum of their community custody range, whichever is longer.*

*“**Community Placement**” was established by the 1988 Legislature and included “community custody” and “post-release supervision.” The 1999 Legislature required a one-year period of community placement for all violent offenses and for all crimes against persons (defined in RCW 9.94A.440), committed between July 25, 1999 and June 30, 2000. For offenses committed on or after July 1, 2000, the term “community placement” no longer applies and all forms of supervision in the community will fall under the definition of “community custody”.*

*“**Crime-Related Prohibition**” was amended by the 1997 Legislature to clarify that “crime-related prohibition,” while generally not including orders that offenders perform affirmative conduct, nevertheless allows the Department of Corrections to require certain affirmative acts, such as undergoing drug testing or polygraph examinations, necessary to monitor compliance with crime-related prohibitions.*

*“**Criminal History**” was first amended in 1986 to reflect the serious nature of Class A felonies, so that prior juvenile Class A felonies do not “wash out” when the defendant becomes 23 years of age.*

*In 1988, the Commission recommended that the definition of juvenile criminal history (RCW 9.94A.030(12)(b)) be amended to include serious traffic offenses. The offender scoring rules (RCW 9.94A.360) include serious traffic offenses when determining the sentence range for felony traffic offenses; therefore, this section was changed to be consistent.*

*The 1990 Legislature amended the definition of “criminal history” so that juvenile convictions for sex offenses are always included in criminal history despite the offender’s age or the class of the crime.*

*The 1995 Legislature expanded the definition of “criminal history” to include juvenile convictions for serious violent offenses, regardless of the offender’s age at the time of the offense.*

*The 1997 Legislature removed the provision for “wash out” at age 23 for all juvenile felonies, repealing language that excluded certain adjudications for non-violent, non-sex offenses committed before the offender was 15 years old.*

*In 1999, the Court of Appeals ruled that pre-1997 plea agreements, providing that certain juvenile offenses would not be counted in criminal history, do not insulate current offenders from changes in the law and cannot be relied upon when an offender is sentenced on a subsequent conviction for an offense committed after the effective date of the change in 1997. See *State v. McRae*, 96 Wn. App. 298 (1999).*

*“**Drug Offense**,” as defined in the Sentencing Reform Act, excludes simple possession, forged prescriptions and violations of the Legend Drug Act.*

*In 1999, the Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not “drug offenses” and are not subject to the multiple “scoring” requirement for drug offenses, under RCW 9.94A.360, or to the community*

placement requirement for drug offenses, under RCW 9.94A.120(9)(a). See *In re Hopkins*, 137 Wn.2d 897 (1999).

**“Escape”** was amended in 1988 to include failure to comply with movement limitations while on community custody.

**“Felony Traffic Offense”** was amended in 1984 to include Eluding a Police Officer. That provision was removed from the definition in 1986. The 1987 Legislature once again defined this crime as a felony traffic offense.

**“Financial Obligation”** was amended by the 1993 Legislature to expand the range of financial obligations that may be imposed against offenders convicted of Vehicular Assault or of Vehicular Homicide While Under the Influence of Intoxicating Liquor or Any Drug. The court may now impose up to \$1,000 in costs incurred by public agencies in an emergency response to the incident that resulted in a conviction.

**“First-time Offender”** at first confused practitioners and raised questions concerning whether prior juvenile convictions precluded an adult offender from being sentenced as a “First-time Offender.” Changes in the definition in 1986 made it clear that a juvenile offense committed at the age of 15 years of older disqualifies the offender from being sentenced under the First-time Offender Waiver. The 1995 Legislature modified the definition of “First-time Offender” to exclude persons with prior juvenile adjudications of serious violent offenses, regardless of age at the time of adjudication. The 1997 Legislature further disqualified offenders with ~~any~~ prior juvenile felony adjudication from the First-time Offender Waiver.

The definition of “First-time Offender” was amended in 1987 to exclude the use of the waiver for persons convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Schedule I or II Narcotics.

In order to include certain Vehicular Homicide offenders in the First-time Offender Waiver, the definition of “violent offenses” was amended in 1987 to include Vehicular Homicide only when caused by driving under the influence or by reckless driving. Vehicular Homicide is not classified as a violent offense if caused by disregard for the safety of others.

The 1995 Legislature amended the definition of “First-time Offender” to exclude persons convicted of Manufacture, Delivery, or Possession with Intent to Deliver Methamphetamine.

The 1998 Legislature amended the definition of “First-time Offender” to exclude persons convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Flunitrazepam from Schedule IV (commonly known as Rohypnol).

**“Most Serious Offense”** was first defined in 1993, as part of Initiative Measure No. 593, which added the definitions of “most serious offense” and “persistent offender.” The definition of “persistent offender” requires two previous convictions “as an offender” of “most serious offenses.”

**“Offender”** was defined in 1993 to include juveniles whose cases are transferred from juvenile court to adult criminal court when the juvenile court declines jurisdiction after a hearing under RCW 13.40.110. However, the definition did not include juveniles whose cases are transferred automatically to adult criminal court under RCW 13.04.030(1)(e)(iv), a provision added by the

*Youth Violence Act of 1994. That legislation gave criminal courts exclusive original jurisdiction of certain cases involving juveniles age 16 or older, without requiring juvenile courts to decline jurisdiction. The 1997 Legislature clarified that a conviction of a 16- or 17-year-old in adult criminal court counts as a “strike” under Initiative 593 if the court’s jurisdiction were based either on an automatic decline (RCW 13.04.030(1)(e)(v) or a transfer following a hearing (RCW 13.40.110).*

*“**Persistent Offender**” was defined in 1993 as part of Initiative Measure No. 593. The definition of “persistent offender” requires two previous convictions “as an offender” of “most serious offenses.” Each “most serious offense” must have been committed after conviction of the previous such offense. A persistent offender is sentenced to life in prison without the possibility of release, under RCW 9.94A.120(4).*

*The 1996 Legislature amended the definition of “persistent offender” to include persons convicted of specified sex offenses with one previous conviction “as an offender” of one of the specified sex offenses. The second such offense must have been committed after conviction of the first.*

*The 1997 Legislature amended the definition of “persistent offender” to include persons convicted of additional sex offenses against children after a previous conviction of one of the specified sex offenses. The offenses added in 1997 are Rape of a Child 1 and 2, Child Molestation 1, Homicide by Abuse with sexual motivation, and Assault of a Child 1 with sexual motivation. The legislation specified that, for a conviction to be counted in determining “persistent offender” status, Rape of a Child 1 must have been committed when the offender was 16 or older, and Rape of a Child 2 must have been committed when the offender was 18 or older.*

*The 1997 Legislature also clarified that a prior conviction of Indecent Liberties is counted in determining “persistent offender” status under all definitions of the offense in effect since 1975, except for cases under RCW 9A.44.100(1)(c) as it existed between June 11, 1986 and July 1, 1988, where the victim was 14 or 15 years old, the offender was at least 48 months older, and the offender was in a position of authority over the victim.*

*“**Post-release Supervision**” was defined in 1988 in relation to the community placement program. For offenses committed on or after July 1, 2000, the term “post-release supervision” will no longer apply and all forms of supervision in the community will fall under the definition of “community custody”.*

*“**Risk Assessment**” was defined in 1999 as part of the Offender Accountability Act.*

*“**Serious Offense**” was amended in 1987 to include federal and out-of-state convictions.*

*“**Serious Violent Offense**” was expanded in 1986 to include attempts, solicitations and conspiracies to commit any of the felonies listed in the definition. Previously, the law was not clear in three areas: (1) Whether anticipatory crimes were included in this definition; (2) whether anticipatory crimes are eligible for a deadly weapon enhancement; and (3) how anticipatory crimes are to be “scored” in criminal history. The statutes in this section make clear that anticipatory crimes are considered the same as completed crimes for purposes of determining*

*whether the crime is a serious violent offense, whether the crime warrants a longer sentence for a deadly weapon and/or whether to increase the offender's criminal history "score."*

*The 1997 Legislature added Manslaughter 1 to the definition of "serious violent offense."*

*"Sex Offense" was added in 1986 to clarify which offenses qualify for the sex offender sentencing options and which are precluded from being considered for the First-time Offender Waiver. Anticipatory crimes are included within the definition.*

*The 1990 Legislature amended the definition of "sex offense" to include crimes committed with sexual motivation.*

*The 1995 Legislature amended the definition of "sex offense" to include only felonies. However, a criminal attempt, solicitation or conspiracy to commit a sex offense triggers the requirement to register as a sex offender under 9A.44.130, even when the offense is classified as a gross misdemeanor.*

*The 1999 Legislature amended the definition of "sex offense" to exclude offenders convicted of Failure to Register as a Kidnapper, unless the original kidnapping offense was sexually motivated. Kidnapping offenders are still required to register with the county sheriff (See RCW 9A.44.130(9) and (10)).*

*The 1999 Legislature also modified the definition of "sex offense" to include, for the purpose of "scoring" and offender's criminal history, those convictions of comparable felony sex offenses before July 1, 1976.*

*"Violent Offense" was amended in 1986 to include the crime of Vehicular Assault. The Commission decided that this crime involves basically the same offender behavior as Vehicular Homicide, which is already classified as a "violent offense."*

*The 1990 Legislature deleted Child Molestation 1 and Rape 2 from the specific list of "violent offenses," because those offenses were raised from Class B to Class A offenses. All Class A offenses are defined as "violent offenses."*

*The 1997 Legislature amended the definition of "violent offense" to include federal and out-of-state convictions.*

*The 1997 Legislature also added Drive-by Shooting (formerly Reckless Endangerment 1, nonviolent) to the specific list of offenses defined as "violent offenses."*

*"Work Crew" eligibility was broadened in 1993, removing the language that limited the performance of civic improvement tasks to public or private nonprofit property.*

*The 1999 Legislature expanded eligibility for work crew to offenders on community custody, pursuant to RCW 9.94A.205(2)(c).*

**RCW 9.94A.030 Definitions.** *(Effective July 1, 2001.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.*

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.145, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670, 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(5) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

(6) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(7) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(9) "Confinement" means total or partial confinement.

(10) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.



(13) *"Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.*

(14) *"Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.*

(15) *"Department" means the department of corrections.*

(16) *"Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.*

(17) *"Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.*

(18) *"Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.*

(19) *"Drug offense" means:*

(a) *Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);*

(b) *Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or*

(c) *Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.*

(20) *"Earned release" means earned release from confinement as provided in RCW 9.94A.150.*

(21) *"Escape" means:*

(a) *Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or*

(b) *Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.*

(22) *"Felony traffic offense" means:*

(a) *Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or*

(b) *Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.*

(23) *"Fine" means a specific sum of money ordered by the sentencing court to be paid by*

*the offender to the court over a specific period of time.*

*(24) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.*

*(25) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.*

*(26) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.*

*(27) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:*

*(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;*

*(b) Assault in the second degree;*

*(c) Assault of a child in the second degree;*

*(d) Child molestation in the second degree;*

*(e) Controlled substance homicide;*

*(f) Extortion in the first degree;*

*(g) Incest when committed against a child under age fourteen;*

*(h) Indecent liberties;*

*(i) Kidnapping in the second degree;*

*(j) Leading organized crime;*

*(k) Manslaughter in the first degree;*

*(l) Manslaughter in the second degree;*

*(m) Promoting prostitution in the first degree;*

*(n) Rape in the third degree;*

*(o) Robbery in the second degree;*

*(p) Sexual exploitation;*

*(q) Vehicular assault;*

*(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;*

*(s) Any other class B felony offense with a finding of sexual motivation;*

*(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;*

*(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;*

*(v)(i) A prior conviction for indecent liberties under \*RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;*

*(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from*

June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(28) "Nonviolent offense" means an offense which is not a violent offense.

(29) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(30) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(31) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.360; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection (31)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(32) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(33) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(34) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any

information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(35) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(36) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(37) "Sex offense" means:

(a) A felony that is a violation of:

(i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) RCW 9A.64.020;

(iii) RCW 9.68A.090; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(38) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(39) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(40) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(41) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(42) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(43) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(44) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(45) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.135.

(46) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.137 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(47) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2000 c 28 § 2. Prior: 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

**RCW 9.94A.031 "Offender" and "defendant." (Effective July 1, 2001, until July 1, 2005.)** For purposes of judicial and criminal justice forms promulgated under this chapter and related to corrections and sentencing, the terms "offender" and "defendant" may be used interchangeably without substantive effect.

*This section expires July 1, 2005. [2000 c 28 § 3.]*

**RCW 9.94A.035 Classification of felonies not in Title 9A RCW.** For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;

(2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter;

(3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter. [1996 c 44 § 1.]

#### Comment

*This section, added in 1996 at the Commission's request, provides a means of classifying, for purposes of the Sentencing Reform Act, felonies that are not classified in the statutes defining them. The classification system is consistent with RCW 9A.20.040 for offenses related to other felonies, and to RCW 9A.28.010 for anticipatory offenses. It is also consistent with State v. Kelley, 77 Wn. App. 66 (1995), which held that doubling the statutory maximum sentence for an offense under RCW 69.50.408 does not change the classification of the offense.*

**RCW 9.94A.040 Sentencing guidelines commission--Established--Powers and duties. (Effective until July 1, 2001.)** (1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June

30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The office of the administrator for the courts shall provide the commission with available data on diversion and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

- (i) Racial disproportionality in juvenile and adult sentencing;
- (ii) The capacity of state and local juvenile and adult facilities and resources; and
- (iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.310, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.120(11) for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW. [1999 c 352 § 1; 1999 c 196 § 3. Prior: 1997 c 365 § 2; 1997 c 338 § 3; 1996 c 232 § 1; 1995 c 269 § 303; 1994 c 87 § 1; 1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4.]

*Comment*

*The 1996 Legislature updated and expanded the Commission's responsibilities to reflect the fact that a determinate sentencing system had been in place for over a decade, and also that there was a need for independent review of juvenile disposition standards and related issues in the juvenile justice system.*

*The 1997 Legislature expanded the permissible sentence ranges for Murder 2 at Seriousness Level XIII, reducing the allowable minimum to 50% of the maximum, consistent with an amendment to the sentencing grid (RCW 9.94A.310) that increased the maximum in the standard range. However, the 1997 Legislature also included additional offenses at Level XIII without authorizing an expansion of the permissible range for those offenses. The 1999 Legislature subsequently remedied this inconsistency, amending the sentencing grid to place Murder 2 alone at Level XIV with its own "range width," returning Level XIII to its original standard ranges and adjusting the upper seriousness levels accordingly. See RCW 9.94A.310.*

*The 1999 Legislature, enacting the Offender Accountability Act, directed the Sentencing Guidelines Commission to formulate community custody ranges to be included in sentences for offenses committed on or after July 1, 2000. Through its rulemaking authority, the Commission adopted community custody ranges, which became effective July 1, 2000, and are published in WAC 437.20.010.*

**RCW 9.94A.040 Sentencing guidelines commission--Established--Powers and duties.**  
**(Effective July 1, 2001.)** (1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation,



analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The office of the administrator for the courts shall provide the commission with available data on diversion and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.310, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.715 for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department

for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW. [2000 c 28 § 41. Prior: 1999 c 352 § 1; 1999 c 196 § 3; prior: 1997 c 365 § 2; 1997 c 338 § 3; 1996 c 232 § 1; 1995 c 269 § 303; 1994 c 87 § 1; 1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4.]

**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.050 Sentencing guidelines commission--Research staff--Data, information, assistance--Bylaws--Salary of executive officer.** The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request from the office of financial management, the indeterminate sentence review board, administrator for the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040. [1999 c 143 § 10; 1982 c 192 § 3; 1981 c 137 § 5.]

**RCW 9.94A.060 Sentencing guidelines commission--Membership--Appointments--Terms of office--Expenses and compensation.** (1) The commission consists of twenty voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation by the senate.

(2) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management or designee, as an ex officio member;

(c) Until the indeterminate sentence review board ceases to exist pursuant to RCW 9.95.0011, the chair of the board, as an ex officio member;

(d) The head of the state agency, or the agency head's designee, having responsibility for juvenile corrections programs, as an ex officio member;

(e) Two prosecuting attorneys;

(f) Two attorneys with particular expertise in defense work;

(g) Four persons who are superior court judges;

(h) One person who is the chief law enforcement officer of a county or city;

(i) Four members of the public who are not prosecutors, defense attorneys, judges, or law enforcement officers, one of whom is a victim of crime or a crime victims' advocate;

(j) One person who is an elected official of a county government, other than a prosecuting attorney or sheriff;

(k) One person who is an elected official of a city government;

(l) One person who is an administrator of juvenile court services.

In making the appointments, the governor shall endeavor to assure that the commission membership includes adequate representation and expertise relating to both the adult criminal justice system and the juvenile justice system. In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the defense attorney members, of the association of superior court judges in respect to the members who are judges, of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer, of the Washington state association of counties in respect to the member who is a county official, of the association of Washington cities in respect to the member who is a city official, of the office of crime victims advocacy and other organizations of crime victims in respect to the member who is a victim of crime or a crime victims' advocate, and of the Washington association of juvenile court administrators in respect to the member who is an administrator of juvenile court services.

(3)(a) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed.

(b) The governor shall stagger the terms of the members appointed under subsection (2)(j), (k), and (l) of this section by appointing one of them for a term of one year, one for a term of two years, and one for a term of three years.

(4) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120, as now existing or hereafter amended. Members shall be compensated in accordance with RCW 43.03.250. [1996 c 232 § 3; 1993 c 11 § 1; 1988 c 157 § 2; 1984 c 287 § 10; 1981 c 137 § 6.]

### Comment

*The 1993 Legislature expanded the voting membership of the Sentencing Guidelines Commission to 16 members. It added the chair of the Indeterminate Sentence Review Board. It also authorized the director of the Office of Financial Management to name a designee as a voting member of the Commission.*

*The 1996 Legislature modified the Commission's voting membership to reflect its new responsibilities in juvenile justice, to provide for local government representation and to assure representation of crime victims. Added as members were the Assistant Secretary of Social and Health Services for Juvenile Rehabilitation, a county juvenile court administrators, an elected official from county government, an elected official from city government and a citizen representative of crime victims. The Legislature removed the chair of the Clemency and Pardons Board as a member.*

**RCW 9.94A.070 Standard sentence ranges--Revisions or modifications--Submission to legislature.** Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature at least every two years. [1986 c 257 § 19; 1981 c 137 § 7.]

**RCW 9.94A.080 Plea agreements--Discussions--Contents of agreements.** The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (1) Move for dismissal of other charges or counts;
- (2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;
- (3) Recommend a particular sentence outside of the sentence range;
- (4) Agree to file a particular charge or count;
- (5) Agree not to file other charges or counts; or
- (6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

In a case involving a crime against persons as defined in RCW 9.94A.440, the prosecutor shall make reasonable efforts to inform the victim of the violent offense of the nature of and reasons for the plea agreement, including all offenses the prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement.

The court shall not participate in any discussions under this section.  
[1995 c 288 § 1; 1981 c 137 § 8.]

#### Comment

*Pursuant to subsection (6), agreements may be reached regarding the filing or dismissal of deadly weapon allegations, the amount of restitution to be paid, whether an alternative conversion from total confinement to community service will be recommended and whether confinement shall be total or partial. These examples are not exclusive, and subsection (6) was designed to allow agreements appropriate to the specific facts of individual cases permitted under the Act. See RCW 9.94A.450, the Recommended Prosecuting Standards for Charging and Plea Dispositions.*

*The requirement that in no instance may the prosecutor agree not to allege prior convictions does not apply to situations in which the conviction is constitutionally invalid on its face. Similarly, it need not be alleged if the prior conviction has been previously determined through a personal restraint petition (or equivalent process) to have been unconstitutionally obtained. See State v. Ammons, 105 Wn.2d 175, 187 (1986).*

*The 1995 Legislature added a requirement that prosecutors consult with the victims of violent offenses about plea agreements in such cases.*

*A defendant may not assert a cruel and unusual punishment claim or an equal protection claim in challenging a standard range sentence negotiated as part of a plea agreement. A plea agreement for a standard range sentence operates as a waiver of nonjurisdictional challenges to the sentence. See State v. Moton, 976 P.2d 1286 (1999).*

**RCW 9.94A.090 Plea agreements--Information to court--Approval or disapproval--Sentencing judge not bound.** (1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.080, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The prosecutor shall inform the court on the record whether the victim or victims of all crimes against persons, as defined in RCW 9.94A.440, covered by the plea agreement have expressed any objections to or comments on the nature of and reasons for the plea agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by the agreement and that the defendant may withdraw the defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea. [1995 c 288 § 2; 1984 c 209 § 4; 1981 c 137 § 9.]

*Comment*

*Subsection (1) gives the judge hearing a defendant's plea of guilty the authority to void the plea agreement upon which it is based if it is not consistent with the interests of justice and the prosecuting standards. This includes the authority to deny an amendment of the information. CrR 2.1(e).*

*A sentencing judge is not bound by the recommendations of any party, even if that judge also accepted the defendant's plea of guilty. This is consistent with Washington law preceding implementation of the Sentencing Reform Act.*

*The 1995 Legislature added a requirement that prosecutors inform the sentencing court whether the victims of violent crimes have expressed any objections or comments on the plea agreement*

**RCW 9.94A.100 Plea agreements--Criminal history.** The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing. [1981 c 137 § 10.]

*Comment*

*This section does not violate a defendant's freedom against self-incrimination. State v. Ammons, 105 Wn.2d 175, 183-184 (1986).*

**RCW 9.94A.103 Plea agreements and sentences for certain offenders--Public records.** Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:

- (1) Any violent offense as defined in this chapter;
- (2) Any most serious offense as defined in this chapter;

- (3) Any felony with a deadly weapon special verdict under RCW 9.94A.125;
- (4) Any felony with any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both; and/or
- (5) The felony crimes of possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony. [1997 c 338 § 48; 1995 c 129 § 5 (Initiative Measure No. 159).]

*Comment*

*Initiative Measure No. 159 added this section, requiring the maintenance as public records of all plea or recommended sentencing agreements involving violent offenses, most serious offenses or felonies involving deadly weapons.*

**RCW 9.94A.105 Judicial records for sentences of certain offenders.** (1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.103 shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.103. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The sentencing guidelines commission shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section and shall compile a yearly and cumulative judicial record of each sentencing judge in regards to his or her sentencing practices for any and all felony crimes involving:

- (a) Any violent offense as defined in this chapter;
- (b) Any most serious offense as defined in this chapter;
- (c) Any felony with any deadly weapon special verdict under RCW 9.94A.125;
- (d) Any felony with any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both; and/or
- (e) The felony crimes of possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony.

(3) The sentencing guidelines commission shall compare each individual judge's sentencing practices to the standard or presumptive sentence range for any and all felony crimes listed in subsection (2) of this section for the appropriate offense level as defined in RCW 9.94A.320, offender score as defined in RCW 9.94A.360, and any applicable deadly weapon enhancements as defined in RCW 9.94A.310 (3) or (4), or both. These comparative records shall be retained and made available to the public for review in a current, newly created or reworked official published document by the sentencing guidelines commission.

(4) Any and all felony sentences which are either above or below the standard or presumptive sentence range in subsection (3) of this section shall also mark whether the prosecuting attorney in the case also recommended a similar sentence, if any, which was either above or below the presumptive sentence range and shall also indicate if the sentence was in conjunction with an approved alternative sentencing option including a first-time offender waiver, sex offender sentencing alternative, or other prescribed sentencing option.

(5) If any completed judgment and sentence document as defined in subsection (1) of this

section is not sent to the sentencing guidelines commission as required in subsection (2) of this section, the sentencing guidelines commission shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the sentencing guidelines commission. [1997 c 338 § 49; 1995 c 129 § 6 (Initiative Measure No. 159).]

#### Comment

*Initiative Measure No. 159 added this section, requiring that every felony Judgment and Sentence document includes all recommended plea or sentencing agreements, the printed name of the sentencing judge and space for the judge's reasons to impose an exceptional sentence. Records of sentences above or below the standard range must reveal whether the prosecuting attorney recommended a similar sentence.*

*The Sentencing Guidelines Commission is required to compile annual and cumulative records of each judge's sentencing practices involving violent offenses, most serious offenses and felonies involving deadly weapons. The Commission is to compare each judge's sentencing practices to the standard range for each of these offenses, and to publish these comparative records.*

**RCW 9.94A.110 Sentencing hearing--Presentencing procedures--Disclosure of mental health services information.** (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall

be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information related to mental health services, as defined in RCW 71.05.445 and 71.34.225, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information related to mental health services as authorized by RCW 71.05.445, 71.34.225, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services. [2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 § 2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11.]

#### Comment

*This section is procedurally implemented through CrR 7.1. Relevant information for purposes of sentencing is to be submitted through written presentence reports. Information set forth in the presentence reports of the prosecuting attorney and the Department of Corrections will be considered admitted, unless specifically controverted by the defendant. State v. Ammons, 105 Wn.2d 175, 184 (1986).*

*A comprehensive discussion regarding the determination of a defendant's criminal history at the sentencing hearing is contained in State v. Ammons, 105 Wn.2d 175 (1986). See RCW 9.94A.370 for a discussion of other disputed facts that may affect the defendant's sentence.*

*The 1988 Legislature directed the court to order presentence reports on all offenders convicted of felony sex offenses.*

*The 1998 Legislature directed the courts to order the Department of Corrections to complete presentence reports before imposing sentences where the court determines the offender may be a mentally ill person as defined in RCW 71.24.025.*

*The 1999 Legislature authorized courts to order the Department of Corrections to complete presentence risk assessment reports for offenders and directed courts to consider risk assessment reports as part of the determination of what sentence to impose, although sentences may be entered without considering a risk assessment report. The 1999 Legislature also mandated presentence chemical dependency screening reports to be completed for all offenders violating the Uniform Controlled Substances Act (RCW 69.50). A court may specifically waive a chemical dependency screening in such cases. In other cases (non-drug offenses), a court may order a chemical dependency screening where the court finds that a chemical dependency contributed to the crime.*

**RCW 9.94A.120 Sentences.** *(Revised by 2000 c 28, effective July 1, 2001.)* When a



person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (6), (8), or (9), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.150(4).

(5)(a) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include a term of community supervision or community custody as specified in (b) of this subsection, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Undergo available outpatient treatment for up to the period specified in (b) of this subsection, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (iii) Pursue a prescribed, secular course of study or vocational training;
- (iv) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;
- (v) Report as directed to a community corrections officer; or
- (vi) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(b) The terms and statuses applicable to sentences under (a) of this subsection are:

(i) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and

(ii) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this

subsection (5) is subject to conditions and sanctions as authorized in this subsection (5) and in subsection (11)(b) and (c) of this section.

(c) The department shall discharge from community supervision any offender sentenced under this subsection (5) before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

(iii) For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and

(iv) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

(b) If the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

The court shall also impose:

(i) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(ii) Crime-related prohibitions including a condition not to use illegal controlled substances;

(iii) A requirement to submit to urinalysis or other testing to monitor that status; and

(iv) A term of community custody pursuant to subsection (11) of this section to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(A) Devote time to a specific employment or training;

(B) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(C) Report as directed to a community corrections officer;

(D) Pay all court-ordered legal financial obligations;

(E) Perform community service work;

(F) Stay out of areas designated by the sentencing judge;

(G) Such other conditions as the court may require such as affirmative conditions.

(c) If the offender violates any of the sentence conditions in (b) of this subsection or is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department unless waived by the offender.

(i) If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(ii) If the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(e) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to community custody and earned early release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned early release time.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community service work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in subsection (11)(b) and (c) of this section; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(8)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the

party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sex offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section;

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime; and

(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned release time while serving a suspended sentence.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and

recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(vii) Except as provided in (a)(viii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

(ix) For purposes of this subsection (8), "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

(b) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

(c) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(d) Within the funds available for this purpose, the department shall develop and monitor

transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.

(9)(a)(i) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, but before July 25, 1999, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(ii) Except for persons sentenced under (b) of this subsection or subsection (10)(a) of this section, when a court sentences a person to a term of total confinement to the custody of the department of corrections for a violent offense, any crime against a person under RCW 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences the offender under this subsection (9)(a)(ii) to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, or a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, but before July 1, 2000, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not possess or consume controlled substances except pursuant to lawfully

issued prescriptions;

(iv) The offender shall pay supervision fees as determined by the department of corrections;

(v) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement; and

(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The offender shall comply with any crime-related prohibitions; or

(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, but before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section.

(c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(11)(a) When a court sentences a person to the custody of the department of corrections for a sex offense, a violent offense, any crime against a person under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin: (i) Upon completion of the term of confinement; (ii) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2); or (iii) with regard to offenders sentenced

under subsection (6) of this section, upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(b) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in subsection (9)(b)(i) through (vi) of this section. The conditions may also include those provided for in subsection (9)(c)(i) through (vi) of this section. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to (f) of this subsection. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(c) If an offender violates conditions imposed by the court or the department pursuant to this subsection during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.205 and 9.94A.207.

(d) Except for terms of community custody under subsection (8) of this section, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(e) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(f) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (11)(f).

(g) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (i) The crime of conviction; (ii) the offender's risk of reoffending; or (iii) the safety of the community.

(12) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(13)(a) If a sentence imposed includes payment of a legal financial obligation, the sentence shall



specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit.

(b) For an offense committed prior to July 1, 2000, the offender's compliance with payment of legal financial obligations shall be supervised by the department for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement, whichever period ends later. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period.

(c) For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department of corrections shall supervise the offender's compliance with payment of the legal financial obligations for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement, whichever period ends later. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction.

(d) Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(14) Except as provided under \*\*RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(15) All offenders sentenced to terms involving community supervision, community service, community placement, community custody, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(a) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may additionally require the offender to participate in rehabilitative programs or otherwise perform affirmative conduct, and to obey all laws.

The conditions authorized under this subsection (15)(b) may be imposed by the department

prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) or (11) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) or (11)(e) of this section.

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(16) All offenders sentenced to terms involving community supervision, community service, community custody, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(17) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(18) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(19) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(20) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(21) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(22) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(23) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to

any other payments of monetary obligations.

(24) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(25)(a) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this section shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified providers are available for treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; (iii) the evaluation and treatment plan comply with the rules adopted by the department of health; or (iv) the treatment provider is employed by the department. A treatment provider selected by an offender who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified provider.

(b) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home. [2000 c 226 § 2; 2000 c 43 § 1. Prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12.]

#### NOTES:

**Reviser's note:** This section was amended by 2000 c 43 § 1 and by 2000 c 226 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

See also the amendment by 2000 c 28 § 5, effective July 1, 2001.

**Finding--Intent--2000 c 226:** "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield*, 980 P.2d 1271 (1999) and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 § 1.]

**Drug offender options--Report:** "The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates." [1999 c 197 § 12.]

#### Comment

*RCW 9.94A.120(3) requires that sentences outside the standard range be determinate sentences. A "determinate sentence," is "a sentence that states with exactitude the number of actual years,*

*months or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation.” RCW 9.94A.030(17). When a court imposes a sentence outside the standard range, such a sentence must be expressed in terms of the categories allowed under the law.*

*The First-time Offender Waiver allows a court to impose up to 90 days of confinement, even for offenders with a sentence of 0 to 60 days.*

*The 1986 Legislature amended the provisions for inpatient treatment of sex offenders. The sex offender treatment program was transferred from the Department of Social and Health Services to the Department of Corrections. The 1987 Legislature clarified that the transfer of the treatment program applies to offenders whose crimes were committed after July 1, 1987. Offenders whose crimes were committed before that date were still to be sent to the programs at Eastern or Western State Hospitals, but all sex offenders were to be transferred to the Department of Corrections by 1993. A provision requiring that the treatment provider find the offender amenable to treatment went into effect in 1986.*

*RCW 9.94A.120(17) codifies the constitutional requirement that offenders receive credit for time served prior to sentencing. See State v. Phelan, 100 Wn.2d 508, 671 P.2d 1212 (1983).*

*State v. Bernhard, 108 Wn.2d 527, 741 P.2d 1 (1987) covers the court’s authority to designate a treatment facility as an exceptional condition of a community supervision sentence.*

*The 1988 Legislature established a program of community placement for certain offenders following their release from prison. RCW 9.94A.120(9) establishes the conditions of supervision for both community custody and post-release supervision, the two forms of community placement. That subsection was amended by the 1999 Legislature in the Offender Accountability Act, which provided that community placement will become community custody for eligible offenses committed on or after July 1, 2000. The Offender Accountability Act authorized the imposition of affirmative conditions on offenders serving on community custody (see RCW 9.94A.120(11)).*

*The 1988 Legislature directed that restitution to victims shall be the first payment of monetary obligations. The Legislature also clarified that the Department of Corrections is responsible for supervising payment of monetary obligations, and if the court does not set a schedule for payments, the Department can set one.*

*The 1989 Legislature changed the allowable financial obligations to include payment for the cost of evaluating the offender’s amenability to treatment and payment for the cost of treatment.*

*The 1990 Legislature increased the mandatory minimum sentence for Rape 1 from three years to five years.*

*The 1990 Legislature revised several aspects of the Special Sex Offender Sentencing Alternative. These include increasing the accountability of the treatment provider to the court, changing the maximum sentence allowed from six years to eight years, increasing the length of community supervision and treatment and directing that, after July 1991, examinations and treatment under SSOSA be conducted by certified sex offender treatment providers.*

*The state hospital sex offender treatment program was phased out beginning in 1987. Offenders whose crimes were committed before July 1987 were no longer admitted to the hospital program nor were they eligible for the prison sex offender treatment program. The 1990 Legislature added a provision allowing this category of sex offender to be admitted to the prison treatment program, subject to available funds.*

*The 1990 Legislature changed the allowable length of community placement for sex offenders and serious violent offenders from one year to either two years or the period of earned release time, whichever is longer.*

*The 1993 Legislature authorized the Department of Corrections, after July 25, 1993, to require offenders under its supervision to pay for special services including electronic monitoring, day reporting and telephone reporting, depending on the offender's ability to pay.*

*In 1993, Initiative Measure No. 593 amended subsection (4) to require persistent offenders (defined in RCW 9.94A.030(29)) to be sentenced to life in prison without the possibility of release, unless the death penalty is imposed for Aggravated Murder under RCW 10.95.030. Initiative 593 also provided that mandatory periods of total confinement under this subsection (for persistent offenders and those convicted of Murder 1, Assault 1, Assault of a Child 1, and Rape 1) may not be reduced during the mandatory minimum term of confinement for any reason other than emergency medical treatment or, in the case of those convicted of Rape 1, commitment to an inpatient treatment facility. The 1999, the Court of Appeals, Division I, invalidated the provision of Initiative 593 that made Murder 1, Assault 1, Assault of a Child 1 and Rape 1 offenders ineligible for earned release during their mandatory minimum terms, because that issue did not relate to the subject title of the Initiative (the "three strikes" provision), thereby violating the single-subject rule of the state Constitution. See State v. Cloud, 976 P.2d 649 (1999).*

#### *Drug Offender Sentencing Alternative (DOSA):*

*At the request of the Sentencing Guidelines Commission, the 1995 Legislature created an optional, treatment-oriented Drug Offender Sentencing Alternative for offenders convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver a small quantity of a narcotic drug, where the offender has no previous felony convictions, where there is no deadly weapon enhancement, and where the sentencing court determines that the offender would benefit from substance abuse treatment. The definition of "small quantity" was intended to be determined by the court based on local standards. A defendant need not be dependent on a drug to be eligible for the alternative sentence.*

*Under the alternative, an eligible offender is sentenced to total confinement for a period equal to half of the midpoint of the offender's standard range sentence (e.g., 12 months if the standard range is 21 to 27 months). The period of confinement must be served in a state correctional facility, even if it is for less than 12 months. Substance abuse treatment must be provided within the facility during total confinement, as well as after release on an outpatient basis. Offenders sentenced under this alternative may not be placed on work release for more than three months, unless the midpoint of the standard range is more than 24 months (i.e., their period of total confinement is more than 12 months).*

*Upon release at half the midpoint of the standard range, offenders sentenced under the Drug Offender Sentencing Alternative remain on community custody status for an additional year, not including any period in which they are returned to confinement for violating the terms of their release. During this period they are subject to urinalysis or other testing to monitor drug-free status.*

*The Drug Offender Sentencing Alternative was not intended to be available to offenders convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Methamphetamine, because such offenders were eligible for the First-time Offender Waiver. However, the Legislature amended RCW 9.94A.030 to exclude such offenders from the definition of "First-time Offender," and thus those offenders were rendered ineligible for either of the sentencing alternatives.*

*The 1999 Legislature expanded the eligibility for the Drug Offender Sentencing Alternative to include all non-violent, non-sex offenders convicted of violating the Uniform Controlled Substances Act (RCW 69.50), including methamphetamine offenses, and also any other non-violent, non-sex offenders deemed by the court to have a chemical dependency that contributed to the crime. Effective July 25, 1999, offenders with prior felony convictions are now eligible, so long as they were not violent or sex offense convictions. Offenders subject to federal INS deportation detainers or orders are not eligible. Offenders whose standard sentence is more than one year are now eligible (reduced from two years). Courts may prohibit DOSA offenders from drug and alcohol use and may impose other affirmative conditions, and violators are subject to graduated sanctions, including reclassification to serve the unexpired term of total confinement.*

*The 1995 Legislature authorized a sentence to Work Ethic Camp for offenders convicted of drug delivery. That sentence to Work Ethic Camp was intended as an alternative to the Drug Offender Sentencing Alternative, not for use in conjunction with it. The 1999 Legislature subsequently made all drug offenders ineligible for the Work Ethic Camp (see RCW 9.94A.137).*

*The 1996 Legislature required that persons sentenced to prison for Vehicular Assault or Vehicular Homicide also be sentenced to community placement for two years or up to the period of earned release time, whichever is longer.*

*The 1996 Legislature also authorized courts to require that sex offenders whose victims were minors comply with conditions of community placement imposed by the Department of Corrections regarding contact with minor victims or with children of similar age or circumstances.*

*The 1996 Legislature also converted the status of offenders sentenced under the Special Sex Offender Sentencing Alternative from community supervision to community custody and authorized the Department of Corrections to impose sanctions administratively. The same legislation extended the period of community custody for sex offenders sentenced to prison to three years or the period of earned release, whichever is longer, and also authorized courts to extend conditions of community custody for a period up to the statutory maximum sentence for the offense. The same legislation authorized the Department of Corrections to impose additional conditions on sex offenders serving in community custody status.*

*The 1997 Legislature required the Department of Corrections to supervise compliance with*

*payment of legal financial obligations for up to ten years after entry of the judgment and sentence or release from total confinement. The court was also authorized to extend the time for payment of legal financial obligations a subsequent ten years, but the Department is not responsible for supervision after the initial ten-year period.*

*The 1997 Legislature increased from less than eight to less than eleven years the length of a standard-range sentence that may be suspended under the Special Sex Offender Sentencing Alternative. Therefore SSOSA remains available in cases eligible under prior law, despite increases in the seriousness levels of certain offenses under RCW 9.94A.320. The Legislature also required that the state pay for initial evaluation and treatment in SSOSA cases where the defendant was under 18 years old when the charge was filed.*

*The 1997 Legislature also clarified that offenders sentenced under SSOSA are not eligible to accrue earned early release time while serving a suspended sentence.*

*The 1997 Legislature also clarified that the Department of Corrections, in monitoring offenders' compliance with conditions of community placement, community supervision, community service, or payment of legal financial obligations, may require them to perform affirmative actions (such as submitting to drug testing or polygraph examination).*

*The 1998 Legislature authorized the courts to order a mental status evaluation and to require participation in available outpatient mental health treatment for offenders whose sentence includes community placement or community supervision if a court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025 and that this condition is likely to have influenced the offense.*

*The 1999 Legislature, enacting the Offender Accountability Act, modified RCW 9.94A.120 to authorize the imposition of affirmative conditions, both by courts and by the Department of Corrections, on eligible offenders serving a period of community custody, for offenses committed on or after July 1, 2000. Offenders will be supervised according to their risk and will be subject to administrative sanctions by the Department of Corrections. Community custody is required for all sex offenses, all violent offenses, all crimes against persons (defined in RCW 9.94A.440) and all felony drug offenses (except DOSA sentences) committed on or after July 1, 2000, and community custody will replace "community placement" and "community supervision" for offenses committed on or after that date.*

*The 1999 Legislature provided an exception to the mandatory minimum confinement requirement for offenders granted an "extraordinary medical placement" by the Secretary of Corrections pursuant to RCW 9.94A.150(4). See RCW 9.94A.120(4).*

*The 1999 Legislature also authorized courts to order certain domestic violence offenders to participate in domestic violence perpetrator programs as part of their term of supervision in the community. See RCW 9.94A.120(24)*

**RCW 9.94A.120 Sentences. (Effective July 1, 2001.)** ~~(1) When a person is convicted of a felony, the court shall impose punishment as provided in this ((section)) chapter.~~  
~~((1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section,)) (2)(a)~~

~~The court shall impose a sentence ((within the sentence range for the offense.~~

~~(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.~~

~~(3)~~

~~Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.~~

~~(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.150(4).~~

~~(5)(a) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include a term of community supervision or community custody as specified in (b) of this subsection, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:~~

~~(i) Devote time to a specific employment or occupation;~~

~~(ii) Undergo available outpatient treatment for up to the period specified in (b) of this subsection, or inpatient treatment not to exceed the standard range of confinement for that offense;~~

~~(iii) Pursue a prescribed, secular course of study or vocational training;~~

~~(iv) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;~~

~~(v) Report as directed to a community corrections officer; or~~

~~(vi) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.~~

~~(b) The terms and statuses applicable to sentences under (a) of this subsection are:~~

~~(i) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and~~

~~(ii) For crimes committed on or after July 1, 2000, up to one year of community custody~~



~~unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this subsection (5) is subject to conditions and sanctions as authorized in this subsection (5) and in subsection (11)(b) and (c) of this section.~~

~~— (c) The department shall discharge from community supervision any offender sentenced under this subsection (5) before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.~~

~~— (6)(a) An offender is eligible for the special drug offender sentencing alternative if:~~

~~— (i) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9A.310 (3) or (4);~~

~~— (ii) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;~~

~~— (iii) For a violation of the uniform controlled substances act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and~~

~~— (iv) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order.~~

~~— (b) If the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.~~

~~— The court shall also impose:~~

~~— (i) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;~~

~~— (ii) Crime-related prohibitions including a condition not to use illegal controlled substances; and~~

~~— (iii) A requirement to submit to urinalysis or other testing to monitor that status.~~

~~— The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:~~

~~— (A) Devote time to a specific employment or training;~~

~~— (B) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;~~

~~— (C) Report as directed to a community corrections officer;~~

~~— (D) Pay all court-ordered legal financial obligations;~~

~~— (E) Perform community service work;~~

~~— (F) Stay out of areas designated by the sentencing judge;~~

~~— (G) Such other conditions as the court may require such as affirmative conditions.~~

~~— (c) If the offender violates any of the sentence conditions in (b) of this subsection, a violation hearing shall be held by the department unless waived by the offender. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.~~

~~— (d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.~~

~~— (e) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned early release time.~~

~~— (7)) as provided in the following sections and as applicable in the case:~~

~~(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.310;~~

~~(ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;~~

~~(iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;~~

~~(iv) RCW 9.94A.383, relating to community custody for offenders whose term of confinement is one year or less;~~

~~(v) RCW 9.94A.560, relating to persistent offenders;~~

~~(vi) RCW 9.94A.590, relating to mandatory minimum terms;~~

~~(vii) RCW 9.94A.650, relating to the first-time offender waiver;~~

~~(viii) RCW 9.94A.660, relating to the drug offender sentencing alternative;~~

~~(ix) RCW 9.94A.670, relating to the special sex offender sentencing alternative;~~

~~(x) RCW 9.94A.390, relating to exceptional sentences;~~

~~(xi) RCW 9.94A.400, relating to consecutive and concurrent sentences.~~

~~(b) If a standard sentence range has not been established for the ((defendant's)) offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community service work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in ((subsection (11)(b) and (c))) RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds((, considering the purpose of this chapter, that there are substantial and compelling)) reasons justifying an exceptional sentence as provided in RCW 9.94A.390.~~

~~((8)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.~~

~~The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the~~

~~sources of the evaluator's information.~~

~~The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:~~

~~(A) Frequency and type of contact between offender and therapist;~~

~~(B) Specific issues to be addressed in the treatment and description of planned treatment modalities;~~

~~(C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;~~

~~(D) Anticipated length of treatment; and~~

~~(E) Recommended crime-related prohibitions.~~

~~The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.~~

~~(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sex offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:~~

~~(A) The court shall place the defendant on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section;~~

~~(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:~~

~~(I) Devote time to a specific employment or occupation;~~

~~(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;~~

~~(III) Report as directed to the court and a community corrections officer;~~

~~(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or~~

~~(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime; and~~

~~(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned release time while serving a suspended sentence.~~

~~(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and~~

~~include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.~~

~~— (iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.~~

~~— (v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.~~

~~— (vi) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.~~

~~— (vii) Except as provided in (a)(viii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.~~

~~— (viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.~~

~~— (ix) For purposes of this subsection (8), "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.~~

~~— (x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.~~

~~— (b) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.~~

~~— Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including~~

~~crime-related prohibitions and requirements that the offender perform any one or more of the following:~~

- ~~—— (i) Devote time to a specific employment or occupation;~~
- ~~—— (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;~~
- ~~—— (iii) Report as directed to the court and a community corrections officer;~~
- ~~—— (iv) Undergo available outpatient treatment.~~

~~—— If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.~~

~~—— Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.~~

~~—— (c) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.~~

~~—— (d) Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department.~~

~~—— (9)(a)(i) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, but before July 25, 1999, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.~~

~~—— (ii) Except for persons sentenced under (b) of this subsection or subsection (10)(a) of this section, when a court sentences a person to a term of total confinement to the custody of the department of corrections for a violent offense, any crime against a person under RCW 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences the offender under this subsection (9)(a)(ii) to the statutory maximum period of confinement, then the community~~

~~placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.~~

~~(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, or a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, but before July 1, 2000, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:~~

~~(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;~~

~~(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;~~

~~(iii) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;~~

~~(iv) The offender shall pay supervision fees as determined by the department of corrections;~~

~~(v) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement; and~~

~~(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.~~

~~(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:~~

~~(i) The offender shall remain within, or outside of, a specified geographical boundary;~~

~~(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;~~

~~(iii) The offender shall participate in crime-related treatment or counseling services;~~

~~(iv) The offender shall not consume alcohol;~~

~~(v) The offender shall comply with any crime-related prohibitions; or~~

~~(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.~~

~~(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.~~

~~(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, but before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to~~

~~community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2).~~

~~— (b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section.~~

~~— (c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.~~

~~— (11)(a) When a court sentences a person to the custody of the department of corrections for a sex offense, a violent offense, any crime against a person under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2).~~

~~— (b) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in subsection (9)(b)(i) through (vi) of this section. The conditions may also include those provided for in subsection (9)(c)(i) through (vi) of this section. The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to (f) of this subsection. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (15) of this section. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.~~

~~— (c) If an offender violates conditions imposed by the court or the department pursuant to this subsection during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.205 and 9.94A.207.~~

~~— (d) Except for terms of community custody under subsection (8) of this section, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender,~~

~~within the range or at the end of the period of earned release, whichever is later.~~

~~(e) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.~~

~~(f) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection ((11))(f).~~

~~(g) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (i) The crime of conviction; (ii) the offender's risk of reoffending; or (iii) the safety of the community.~~

~~((12))) (3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.~~

~~((13))) (4) If a sentence imposed includes payment of a legal financial obligation, ((the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years)) it shall be imposed as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. ((If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.~~



~~—————(14)) (5) Except as provided under RCW 9.94A.140((17)) (4) and 9.94A.142((17)) (4), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.~~

~~((15) All offenders sentenced to terms involving community supervision, community service, community placement, community custody, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.~~

~~—————(a) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.~~

~~—————(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may additionally require the offender to participate in rehabilitative programs or otherwise perform affirmative conduct, and to obey all laws.~~

~~—————The conditions authorized under this subsection (15)(b) may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) or (11) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) or (11)(e) of this section.~~

~~—————The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.~~

~~—————(16) All offenders sentenced to terms involving community supervision, community service, community custody, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.~~

~~—————(17)) (6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.~~

~~((18) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the~~

~~state as set forth in RCW 9.94A.210 (2) through (6).~~

~~((19)) (7) The court shall order restitution ((whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution)) as provided in RCW 9.94A.140 and 9.94A.142.~~

~~((20)) (8) As a part of any sentence, the court may impose and enforce ((an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement)) crime-related prohibitions and affirmative conditions as provided in this chapter.~~

~~((21)) (9) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.~~

~~((22)) (10) In any sentence of partial confinement, the court may require the ((defendant)) offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.~~

~~((23) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.~~

~~((24)) (11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~

~~((25)(a) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this section shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified providers are available for treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; (iii) the evaluation and treatment plan comply with the rules adopted by the department of health; or (iv) the treatment provider is employed by the department. A treatment provider selected by an offender who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified provider.~~

~~((b) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's~~

~~home.~~)) [2000 c 28 § 5. Prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12.]

**NOTES:**

**Reviser's note:** RCW 9.94A.120 was amended three times during the 2000 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**Drug offender options--Report:** "The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates." [1999 c 197 § 12.]

**RCW 9.94A.123 Legislative finding and intent--Commitment of felony sexual offenders after July 1, 1987.** The legislature finds that the sexual offender treatment programs at western and eastern state hospitals, while not proven to be totally effective, may be of some benefit in positively affecting the behavior of certain sexual offenders. Given the significance of the problems of sexual assault and sexual abuse of children, it is therefore appropriate to review and revise these treatment efforts.

At the same time, concerns regarding the lack of adequate security at the existing programs must be satisfactorily addressed. In an effort to promote public safety, it is the intent of the legislature to transfer the responsibility for felony sexual offenders from the department of social and health services to the department of corrections.

Therefore, no person committing a felony sexual offense on or after July 1, 1987, may be committed under \*RCW 9.94A.120(7)(b) to the department of social and health services at eastern state hospital or western state hospital. Any person committed to the department of social and health services under \*RCW 9.94A.120(7)(b) for an offense committed before July 1, 1987, and still in the custody of the department of social and health services on June 30, 1993, shall be transferred to the custody of the department of corrections. Any person eligible for evaluation or treatment under \*RCW 9.94A.120(7)(b) shall be committed to the department of corrections. [1987 c 402 § 2; 1986 c 301 § 1.]

**NOTES:**

**\*Reviser's note:** RCW 9.94A.120 was amended by 1995 c 108 § 3, which deleted subsection (7)(b).

**RCW 9.94A.125 Deadly weapon special verdict--Definition.** In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the

capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. [1983 c 163 § 3.]

#### Comment

*The SRA did not originally provide sentence enhancement for all crimes involving a deadly weapon. In 1983, the Legislature adopted the Commission's recommendations that additional time be added to the offender's presumptive sentence for some crimes where the use of the deadly weapon warranted additional punishment. These crimes were Kidnapping 1 and 2, Rape 1, Robbery 1, Burglary 1, Burglary 2 (non-dwelling), Assault 2, Escape 1 and Delivery or Possession with Intent to Deliver a Controlled Substance (RCW 9.94A.310). The 1988 Legislature added Theft of Livestock 1 and 2 to this list and the 1992 Legislature added Assault of a Child 2 to the list. The 1986 Legislature had also clarified that the deadly weapon enhancements apply to anticipatory offenses and to all the drug offenses enumerated in RCW 9.94A.030(19).*

*Initiative 159, enacted in 1995, made the deadly weapon enhancement applicable to nearly all felonies, doubled that enhancement for subsequent offenses, and created a separate, more severe enhancement where the weapon was a firearm. State v. Workman, 90 Wn.2d 443 (1978), prohibits "double counting" an element of an offense for the purpose of proving the existence of the crime and using it to enhance the sentence, without specific legislative intent to so allow. Consistent with Workman, neither the firearm enhancement nor the "other deadly weapon" enhancement applies to specified crimes where the use of a firearm is an element of the offense (listed in RCW 9.94A.310(3)(f) and (4)(f)). These sentence enhancements apply to crimes committed on and after July 23, 1995. They are to be served consecutively to any other sentence. The sentencing court should first calculate the presumptive sentence range for the current offense, using the appropriate Offense Seriousness Level and Offender Score. Then the firearm or other deadly weapon enhancement is added to the entire range. See RCW 9.94A.310(3) and (4).*

*A car is not a deadly weapon for sentencing enhancement purposes. See State v. Shepherd, 977 P.2d 635 (1999)*

**RCW 9.94A.127 Sexual motivation special allegation--Procedures.** (1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case other than sex offenses as defined in \*RCW 9.94A.030(33) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in \*RCW 9.94A.030(33) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [1999 c 143 § 11; 1990 c 3 § 601.]

*Comment*

*A finding of sexual motivation was authorized by the 1990 Legislature, to be applicable to any offense except a sex offense.*

**RCW 9.94A.128 Methamphetamine--Manufacturing with child on premises--Special allegation.** In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401(a) relating to manufacture of methamphetamine; or (b) possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture;

the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2000 c 132 § 1.]

**RCW 9.94A.129 Chemical dependency.** (1) Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

(2) This section applies to sentences which include any term other than, or in addition to, a term of total confinement, including suspended sentences. [1999 c 197 § 2.]

**RCW 9.94A.130 Power to defer or suspend sentences abolished--Exceptions.** (*Effective until July 1, 2001.*) The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.120(8)(a), the special sexual offender sentencing alternative, whose sentence may be suspended. [1999 c 143 § 12; 1984 c 209 § 7; 1981 c 137 § 13.]

**RCW 9.94A.130 Power to defer or suspend sentences abolished--Exceptions.** (*Effective July 1, 2001.*) The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended. [2000 c 28 § 9; 1999 c 143 § 12; 1984 c 209 § 7; 1981 c 137 § 13.]

**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.132 Specialized training.** The department is authorized to determine whether any person subject to the confines of a correctional facility would substantially benefit from successful participation in: (1) Literacy training, (2) employment skills training, or (3) educational efforts to identify and control sources of anger and, upon a determination that the person would, may require such successful participation as a condition for eligibility to obtain early release from the confines of a correctional facility.

The department shall adopt rules and procedures to administer this section. [1994 sp.s. c 7 § 533.]

**RCW 9.94A.135 Offender work crews. (*Effective until July 1, 2001.*)** Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules shall include the requirements that the offender work to the best of his or her abilities and that he or she provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crews projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the department administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provided the offender sufficient income to make such payment.

(2) The offender is a student in a school, college, university, or a course of vocational or

technical training designed to fit the student for gainful employment.

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court. [1991 c 181 § 2.]

**RCW 9.94A.135 Offender work crews. (Effective July 1, 2001.)** *Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules require the offender to work to the best of his or her abilities and provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.*

*Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.*

*Work crew tasks shall be performed for a minimum of thirty-five hours per week. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state, or sanctioned under RCW 9.94A.205, are eligible to participate on a work crew. Offenders sentenced for a sex offense are not eligible for the work crew program.*

*An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crew projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.*

*The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.*

*The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.*

*Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the agency administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:*

*(1) The offender has diligently attempted but has been unable to obtain employment that*

*provides the offender sufficient income to make such payment.*

*(2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.*

*(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.*

*(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.*

*(5) Other extenuating circumstances as determined by the court. [2000 c 28 § 27; 1991 c 181 § 2.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.137 Work ethic camp program--Eligibility--Sentencing. (Effective until July 1, 2001.)** (1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of the uniform controlled substances act or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing judge determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of supervision on community custody status as required by RCW 9.94A.120(9)(b) and authorized by RCW 9.94A.120(9)(c); and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training. [1999 c 197 § 5; 1995 1st sp.s. c 19 § 20; 1993 c 338 § 4.]



### Comment

*The 1993 Legislature established the Work Ethic Camp program sentencing alternative.*

*The 1995 Legislature expanded eligibility for Work Ethic Camp by including those sentenced for Possession, Manufacture, Delivery, or Possession with Intent to Deliver a Controlled Substance, eliminating age-based qualifications and reducing from 22 to 16 months the minimum term of confinement qualifying an offender for Work Ethic Camp. The legislation also requires the sentencing court to specify conditions of supervision on community custody status after completion of the Work Ethic Camp, and to specify that violating those conditions may return the offender to total confinement for the remainder of the sentence. The Department of Corrections may deny placement in the Work Ethic Camp on the basis of an offender's custody level. This sentencing option was intended to be an alternative to the treatment-oriented Drug Offender Sentencing Alternative, not for use in conjunction with it.*

*The 1999 Legislature revised the eligibility criteria for the Work Ethic Camp, effective for offenses committed on or after July 25, 1999. Offenders violating the Uniform Controlled Substances Act (RCW 69.50) are not eligible, nor are offenders subject to federal INS deportation detainers or orders. Offenders who have previously participated in Work Ethic Camp are also not eligible. The 1999 Legislature also reduced the minimum sentence qualifying an offender for Work Ethic Camp from 16 months down to 12 months and a day (and a maximum sentence of 36 months). In addition, the 1999 Legislature eliminated the "three-to-one conversion," whereby one day in Work Ethic Camp equaled three days of total confinement.*

**RCW 9.94A.137 Work ethic camp program--Eligibility--Sentencing. (Effective July 1, 2001.)** (1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of the uniform controlled substances act or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify:

(a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of supervision on community custody status as required by RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c)

*the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.*

*(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.*

*(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training. [2000 c 28 § 21; 1999 c 197 § 5; 1995 1st sp.s. c 19 § 20; 1993 c 338 § 4.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.140 Restitution. (Effective until July 1, 2001.)** (1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Except as provided in subsection (3) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department of corrections.

(2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (3) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be

required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The defendant shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(4) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(5) This section does not limit civil remedies or defenses available to the victim or defendant including support enforcement remedies for support ordered under subsection (3) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [1997 c 121 § 3; 1997 c 52 § 1; 1995 c 231 § 1; 1994 c 271 § 601; 1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14.]

**NOTES:**

**Reviser's note:** This section was amended by 1997 c 52 § 1 and by 1997 c 121 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Comment**

*The 1995 Legislature extended the time for determining the amount of restitution from 60 days to 180 days after the sentencing hearing, or longer for good cause. This extension is retroactive to cases where the defendant was sentenced within a year before the effective date (i.e., on or after July 23, 1994) and restitution was not set within 60 days after that sentencing, unless the defendant would be unfairly prejudiced by the delay. In cases meeting that definition, the court may set restitution within 180 days of the effective date, or later for good cause. The same legislation prohibited the court from reducing the amount of restitution ordered because the offender may not be able to pay the full amount, required the court to identify each victim entitled to restitution and the amount due each victim, authorized the state or any victim to collect restitution through civil enforcement, and required that restitution collected be distributed proportionately to multiple victims.*

*Ordinarily the court's jurisdiction to enforce restitution expires ten years after the entry of the judgment and sentence or the offender's release from total confinement, whichever is later. The 1997 Legislature authorized the court to extend jurisdiction an additional ten years for payment of restitution.*

*The 1997 Legislature also required restitution, in cases of Rape of a Child 1, 2, or 3 in which the victim becomes pregnant, to include medical expenses and child support for up to 25 years.*

**RCW 9.94A.140 Restitution.** *(Effective July 1, 2001.) This section applies to offenses committed on or before July 1, 1985.*

*(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.*

*(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.*

*(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.*

*(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department.*

*(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or*

*offenses which are not prosecuted pursuant to a plea agreement.*

*(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.*

*(7) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.*

*(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [2000 c 28 § 32. Prior: 1997 c 121 § 3; 1997 c 52 § 1; 1995 c 231 § 1; 1994 c 271 § 601; 1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14.]*

**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.142 Restitution--Application dates. (Effective until July 1, 2001.)** (1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (4) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community

corrections officer of the change in circumstances. Except as provided in subsection (3) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department of corrections for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction.

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (3) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The defendant shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(4) Regardless of the provisions of subsections (1), (2), and (3) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court

within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(5) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(6) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or defendant including support enforcement remedies for support ordered under subsection (3) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

(7) This section shall apply to offenses committed after July 1, 1985. [2000 c 226 § 3. Prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10.]

***RCW 9.94A.142 Restitution--Application dates. (Effective July 1, 2001.) This section applies to offenses committed after July 1, 1985.***

*(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.*

*(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.*

*(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.*

*(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the*

*statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction.*

*(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.*

*(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.*

*(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.*

*(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.*

*(9) This section does not limit civil remedies or defenses available to the victim, survivors*



*of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [2000 c 226 § 3; 2000 c 28 § 33. Prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10.]*

**RCW 9.94A.145 Legal financial obligations. (Effective until July 1, 2001.) (1)**

Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount. Upon receipt of an offender's monthly payment, after restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department of corrections.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be immediately issued. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) All legal financial obligations that are ordered as a result of a conviction for a felony, may also be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of rape of a child and the victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided

under RCW 9.94A.140(3) and 9.94A.142(3). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. The department of corrections shall supervise the offender's compliance with payment of the legal financial obligations for ten years following the entry of the judgment and sentence, or ten years following the offender's release from total confinement, whichever period ends later. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to truthfully and honestly respond to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring any and all documents as requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. Also, during the period of supervision, the offender may be required at the request of the department to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to truthfully and honestly respond to all questions concerning earning capabilities and the location and nature of all property or financial assets. Also, the offender is required to bring any and all documents as requested by the department in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department shall for any period of supervision be authorized to collect the legal financial obligation from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purposes of disbursements. The department is authorized to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.2001.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties as provided in RCW 9.94A.200 for noncompliance.

(11) The county clerk shall provide the department with individualized monthly billings for each offender with an unsatisfied legal financial obligation and shall provide the department with notice of payments by such offenders no less frequently than weekly.

(12) The department may arrange for the collection of unpaid legal financial obligations through

the county clerk, or through another entity if the clerk does not assume responsibility for collection. The costs for collection services shall be paid by the offender. [2000 c 226 § 4; 1999 c 196 § 6. Prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3.] following RCW 9.94A.030.

#### Comment

*The 1995 Legislature extended the time for determining the amount of restitution from 60 days to 180 days after the sentencing hearing, or longer for good cause. This extension is retroactive to cases where the defendant was sentenced within a year before the effective date (i.e., on or after July 23, 1994) and restitution was not set within 60 days after that sentencing, unless the defendant would be unfairly prejudiced by the delay. In cases meeting that definition, the court may set restitution within 180 days of the effective date, or later for good cause. The same legislation prohibited the court from reducing the amount of restitution ordered because the offender may not be able to pay the full amount, required the court to identify each victim entitled to restitution and the amount due each victim, authorized the state or any victim to collect restitution through civil enforcement, and required that restitution collected be distributed proportionately to multiple victims. This legislation was apparently in response to State v. Krall, 125 Wn. 2d 146 (1994).*

*The 1995 Legislature also authorized the Department of Labor and Industries, which administers the State Crime Victim Compensation Program, to petition the court to order restitution on behalf of a victim entitled to compensation by the program. The same legislation provided an administrative mechanism for the Department to recover from offenders the amounts paid to victims under the program.*

*Ordinarily the court's jurisdiction to enforce restitution expires ten years after the entry of the judgment and sentence or the offender's release from total confinement, whichever is later. The 1997 Legislature authorized the court to extend jurisdiction an additional ten years for payment of restitution.*

*The 1997 Legislature also required restitution, in cases of Rape of a Child 1, 2, or 3 in which the victim becomes pregnant, to include medical expenses and child support for up to 25 years.*

**RCW 9.94A.145 Legal financial obligations. (Effective July 1, 2001.)** *(1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.*

*(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration. Payment of other court-ordered*

*financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.*

*(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.*

*If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.*

*(4) Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.140(6) or 9.94A.142(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.140(6) and 9.94A.142(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. The department of corrections shall supervise the offender's compliance with payment of the legal financial obligations for ten years following the entry of the judgment and sentence, or ten years following the offender's release from total confinement, whichever period ends later. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction.*

*(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.*

*(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a*

*satisfied legal financial obligation.*

*(7) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.*

*(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department is authorized to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.*

*(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.2001.*

*(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.200, 9.94A.205, or 9.94A.207.*

*(11) The county clerk shall provide the department with individualized monthly billings for each offender with an unsatisfied legal financial obligation and shall provide the department with notice of payments by such offenders no less frequently than weekly.*

*(12) The department may arrange for the collection of unpaid legal financial obligations through the county clerk, or through another entity if the clerk does not assume responsibility for collection. The costs for collection services shall be paid by the offender.*

*(13) Nothing in this chapter makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. [2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6. Prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3.]*

**RCW 9.94A.150 Leaving correctional facility or release before expiration of sentence prohibited-Exceptions. (Effective until July 1, 2001.)** No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release

time. In the case of an offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, shall not receive any good time credits or earned early release time for that portion of his or her sentence that results from any deadly weapon enhancements. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned early release time exceed one-third of the total sentence;

(2) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary of corrections may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement under this subsection.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time.

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(7) The governor may pardon any offender;

(8) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.160.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.120(4). [1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2. Prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15.]

### Comment

*The 1990 Legislature changed the maximum earned early release time to fifteen percent of the sentence for offenders convicted of Class A sex offenses and serious violent offenses. The Legislature also clarified that earned early release credits shall not be granted until earned.*

*Initiative 159 excluded the portion of any sentence attributable to a firearm or other deadly weapon enhancement (RCW 9.94A.310(3) and (4)) from reduction by earned early release time. This exclusion applies to sentences for crimes committed after July 23, 1995.*

*The 1996 Legislature provided for transfer to community custody in lieu of earned early release for persons convicted of Vehicular Homicide and Vehicular Assault.*

*The Court of Appeals in *Personal Restraint of Mahrle*, 88 Wn. App. 410 (1997), ruled that the fifteen percent cap on good time credit applies only to an offender convicted of **both** a Class A Serious Violent Offense and a Class A Sex Offense, committed on or after July 1, 1990, and that all other offenders may earn up to one-third earned early release time. The 1999 Legislature added punctuation to the provision in RCW 9.94A.150(1) limiting earned release time for certain offenses, clarifying that offenders convicted of serious violent offenses and offenders convicted of Class A sex offenses may receive a reduction in confinement time of no more than 15 percent of the sentence. This language change expressed the Legislature's original intent, and although the *Mahrle* case was not overturned, it no longer applies to future cases.*

*The 1999 Legislature authorized the Secretary of Corrections to grant an “extraordinary medical placement” for any offender whose medical condition is serious enough to require costly treatment and who poses a low risk to the community because of physical incapacitation, and where cost savings will result to the state. The Department of Corrections must subject all offenders granted an extraordinary medical placement to electronic monitoring, unless it interferes with medical equipment or jeopardizes eligibility for medical care funding. Offenders under a sentence of death or of life without the possibility of release are not eligible for an extraordinary medical placement, and the Secretary of Corrections may revoke such a placement at any time. The Secretary of Corrections is also required to report annually to the Legislature on the use of the “extraordinary medical placement” option.*

**RCW 9.94A.150 Earned release time. (Effective July 1, 2001.)** *No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:*

*(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the*

administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, the aggregate earned release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.125 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time.

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(7) The governor may pardon any offender;



(8) *The department may release an offender from confinement any time within ten days before a release date calculated under this section; and*

(9) *An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.160.*

*Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.590 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.590, however persistent offenders are not eligible for extraordinary medical placement. [2000 c 28 § 28. Prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15.]*

**RCW 9.94A.151 Sex offenders--Release from total confinement--Notification of prosecutor.** (1)(a) When it appears that a person who has been convicted of a sexually violent offense may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(1), the agency with jurisdiction over the person shall refer the person in writing to the prosecuting attorney of the county where that person was convicted, three months prior to the anticipated release from total confinement.

(b) The agency shall inform the prosecutor of the following:

(i) The person's name, identifying factors, anticipated future residence, and offense history; and

(ii) Documentation of institutional adjustment and any treatment received.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency with jurisdiction, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [1992 c 45 § 1; 1990 c 3 § 122.]

**RCW 9.94A.152 Sex offenders--Release of information--Immunity.** The department, its employees, and officials, shall be immune from liability for release of information regarding sex offenders that complies with RCW 4.24.550. [1990 c 3 § 123.]

**RCW 9.94A.153 Sex offenders--Release of information.** In addition to any other information required to be released under other provisions of this chapter, the department may, pursuant to RCW 4.24.550, release information concerning convicted sex offenders confined to the department of corrections. [1990 c 3 § 124.]

**RCW 9.94A.154 Drug offenders--Notice of release or escape.** (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community placement, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(a)(1) (i) or (ii) or (b)(1) (i) or (ii). [1996 c 205 § 4; 1991 c 147 § 1.]

#### Comment

*As originally enacted, this section applied to offenders convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Narcotics Classified in Schedule I or II under the Uniform Controlled Substances Act, or counterfeits of such narcotics. The 1996 Legislature expanded the notification requirement in this section to offenders convicted of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Methamphetamine or Counterfeit Methamphetamine.*

**RCW 9.94A.155 Prisoner escape, parole, release, placement, or furlough--Notification procedures.** (1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community placement, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(6) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(7) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(8) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1996 c 215 § 4. Prior: 1994 c 129 § 3; 1994 c 77 § 1; prior: 1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1.]

**RCW 9.94A.156 Prisoner escape, release, or furlough--Homicide, violent, and sex offenses--Rights of victims and witnesses.** The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases or sex offenses as defined by RCW 9.94A.030 where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under RCW 9.94A.155 and 9.94A.157. [1989 c 30 § 2; 1985 c 346 § 2.]

**RCW 9.94A.157 Prisoner escape, release, or furlough--Requests for notification.**

Requests for notification under RCW 9.94A.155 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections. [1985 c 346 § 3.]

**RCW 9.94A.158 Prisoner escape, release, or furlough--Notification as additional requirement.** The notification requirements of RCW 9.94A.155 are in addition to any requirements in RCW 43.43.745 or other law. [1985 c 346 § 4.]

**RCW 9.94A.159 Prisoner escape, release, or furlough--Consequences of failure to notify.** Civil liability shall not result from failure to provide notice required under RCW 9.94A.155 through 9.94A.158, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence. [1985 c 346 § 7.]

**RCW 9.94A.160 Emergency due to inmate population exceeding correctional facility capacity.** If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1999 c 143 § 13; 1984 c 246 § 1; 1983 c 163 § 4; 1981 c 137 § 16.]

**RCW 9.94A.165 Emergency in county jails population exceeding capacity.** If the governor finds that an emergency exists in that the populations of county jails exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A RCW, the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or

amendment. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend other emergency measures that may relieve the overcrowding.

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1984 c 209 § 9.]

**RCW 9.94A.170 Tolling of term of confinement, supervision.** (1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) Any term of community custody, community placement, or community supervision shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of community custody, community placement, or community supervision shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.207 or 9.94A.195 and is later found not to have violated a condition or requirement of community custody, community placement, or community supervision, time spent in confinement due to such detention shall not toll the period of community custody, community placement, or community supervision.

(4) For terms of confinement or community custody, community placement, or community supervision, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision. [2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17.]

**NOTES:**

**Effective date--2000 c 226 § 5:** "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 226 § 7.]

**Comment**

*In 1993, the Legislature amended RCW 9.94A.170. The power to establish a tolling date for sentences involving supervision was shifted from the court to the Department of Corrections.*

*The 1999 Legislature, enacting the Offender Accountability Act, amended this section to substitute the term "community custody" for the word "supervision." Under that Act, all forms of supervision in the community, for offenses committed on or after July 1, 2000, will be called "community custody."*

**RCW 9.94A.175 Postrelease supervision--Violations--Expenses.** If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94A.200. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A

county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction. [1988 c 153 § 8.]

**RCW 9.94A.180 Term of partial confinement, work release, home detention. (Effective until July 1, 2001.)** (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW \*9.94A.030(26) and 9.94A.135. The offender shall be required as a condition of partial confinement to report to the facility at designated times. An offender may be required to comply with crime-related prohibitions during the period of partial confinement.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the state department of corrections. [1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18.]

**RCW 9.94A.180 Term of partial confinement, work release, home detention. (Effective July 1, 2001.)** (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030(30) and 9.94A.135. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18.]

**RCW 9.94A.185 Home detention--Conditions. (Effective until July 1, 2001.)** Home

detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.401(d) or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this subsection [section] and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(1) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (a) Successfully completing twenty-one days in a work release program, (b) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (c) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (d) having no prior charges of escape, and (e) fulfilling the other conditions of the home detention program.

(2) Participation in a home detention program shall be conditioned upon: (a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (b) abiding by the rules of the home detention program, and (c) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution. [1995 c 108 § 2.]

***RCW 9.94A.185 Home detention--Conditions. (Effective July 1, 2001.)*** (1) *Home detention may not be imposed for offenders convicted of:*

- (a) A violent offense;*
- (b) Any sex offense;*
- (c) Any drug offense;*
- (d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;*
- (e) Assault in the third degree as defined in RCW 9A.36.031;*
- (f) Assault of a child in the third degree;*
- (g) Unlawful imprisonment as defined in RCW 9A.40.040; or*
- (h) Harassment as defined in RCW 9A.46.020.*

*Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.401(d) or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.*

(2) *Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:*

- (a) Successfully completing twenty-one days in a work release program;*
- (b) Having no convictions for burglary in the second degree or residential burglary*

during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution. [2000 c 28 § 30; 1995 c 108 § 2.]

**RCW 9.94A.190 Terms of more than one year or less than one year--Where served--Reimbursement of costs. (Effective until July 1, 2001.)** (1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided for in subsection (3) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided for in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department of corrections for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400.

(4) For sentences imposed pursuant to RCW 9.94A.120(6) which have a sentence range of over one year, notwithstanding any other provision of this section all such sentences regardless of length shall be served in a facility or institution operated, or utilized under contract, by the state. [1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

#### Comment

See also RCW 70.48.400: "Persons sentenced to felony terms or a combination of terms of more



*than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the Department of Corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the financial responsibility of the city or county."*

*The 1986 Legislature provided that offenders with a sentence greater than a year, who also have a sentence less than a year, will serve the entire period of time in a state institution. Prior to this amendment, offenders were transferred from the state institution to a local facility to serve sentences of less than one year.*

*The 1995 Legislature, in creating the Drug Offender Sentencing Alternative (see RCW 9.94A.120(6)(b)), provided that a term of confinement imposed under that alternative must be served, regardless of length, in a state correctional facility.*

**RCW 9.94A.190 Terms of more than one year or less than one year--Where served--Reimbursement of costs. (Effective July 1, 2001.)** *(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided in subsection (3) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.*

*(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.*

*(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400.*

*(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state. [2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]*

**RCW 9.94A.195 Violation of condition or requirement of sentence--Arrest by community corrections officer--Confinement in county jail.** *If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to*

submit to a search and seizure of the offender's person, residence, automobile, or other personal property. A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court, pursuant to a written order. [1984 c 209 § 11.]

#### Comment

*The Sentencing Guidelines Commission intends that Community Corrections Officers exercise their arrest powers sparingly, with due consideration for the seriousness of the violation alleged and the impact of confinement on jail population. Violations may be charged by the Community Corrections Officer upon notice of violation and summons, without arrest.*

*The search and seizure authorized by this section should relate to the violation that the Community Corrections Officer believes to have occurred.*

**RCW 9.94A.200 Noncompliance with condition or requirement of sentence--Procedure--Penalty.** (1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community service obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate. [1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20.]

### Comment

*Although the Legislature has not adopted specific guidelines for the length of sanctions for various violations, the imposition of sanctions should be evaluated with reference to the standard range of the original offense. Rarely should the time to be served for violations exceed the underlying standard range.*

*The 1995 Legislature added (2), for cases where an offender under community supervision is sentenced for a subsequent offense under RCW 9.94A.400.*

*The 1995 Legislature also authorized the Department of Corrections to enter into agreements with non-complying offenders to impose alternative sanctions. Such agreements must be reported to the sentencing court and prosecutor, and the court may modify the sanctions after a hearing.*

**RCW 9.94A.200005 "Earnings," "disposable earnings," and "obligee" defined.** As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "obligee" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned. [1991 c 93 § 1.]

**RCW 9.94A.200010 Legal financial obligation--Notice of payroll deduction--Issuance and content.** (1) The department may issue a notice of payroll deduction in a criminal action if:

- (a) The court at sentencing orders its immediate issuance; or
- (b) The offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month, provided:
  - (i) The judgment and sentence or subsequent order to pay contains a statement that a notice of payroll deduction may be issued without further notice to the offender; or
  - (ii) The department has served a notice on the offender stating such requirements and authorization. Service of such notice shall be made by personal service or any form of mail requiring a return receipt.
- (2) The notice of payroll deduction is to be in writing and include:
  - (a) The name, social security number, and identifying court case number of the offender/employee;
  - (b) The amount to be deducted from the offender/employee's disposable earnings each month, or alternative amounts and frequencies as may be necessary to facilitate processing of the payroll deduction by the employer;
  - (c) A statement that the total amount withheld on all payroll deduction notices for payment of court-ordered legal financial obligations combined shall not exceed twenty-five percent of the offender/employee's disposable earnings; and
  - (d) The address to which the payments are to be mailed or delivered.
- (3) An informational copy of the notice of payroll deduction shall be mailed to the offender's last known address by regular mail or shall be personally served.
- (4) Neither the department nor any agents of the department shall be held liable for actions taken under RCW 9.94A.145 and 9.94A.200005 through 9.94A.200050. [1991 c 93 § 3.]

**RCW 9.94A.200015 Legal financial obligations--Payroll deductions--Maximum amounts withheld, apportionment.** (1) The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender.

- (2) If the offender is subject to two or more notices of payroll deduction for payment of a court-ordered legal financial obligation from different obligees, the employer or entity shall, if the nonexempt portion of the offender's earnings is not sufficient to respond fully to all notices of payroll deduction, apportion the offender's nonexempt disposable earnings between or among the various obligees equally. [1991 c 93 § 4.]

**RCW 9.94A.200020 Legal financial obligations--Notice of payroll deduction--Employer or entity rights and responsibilities.** (1) An employer or entity upon whom a notice of payroll deduction is served, shall make an answer to the department within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the offender is employed by or receives earnings from the employer or entity, whether the employer or entity anticipates paying earnings, and the amount of earnings. If the offender is no longer employed, or receiving earnings from the employer or entity, the answer shall state the present employer or entity's name and address, if known.

(2) Service of a notice of payroll deduction upon an employer or entity requires an employer or entity to immediately make a mandatory payroll deduction from the offender/employee's unpaid disposable earnings. The employer or entity shall thereafter at each pay period deduct the amount stated in the notice divided by the number of pay periods per month. The employer or entity must remit the proper amounts to the appropriate clerk of the court on each date the offender/employee is due to be paid.

(3) The employer or entity may combine amounts withheld from the earnings of more than one employee in a single payment to the clerk of the court, listing separately the amount of the payment that is attributable to each individual employee.

(4) The employer or entity may deduct a processing fee from the remainder of the employee's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 9.94A.200050. The processing fee may not exceed:

(a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and

(b) One dollar for each subsequent disbursement made under the notice of payroll deduction.

(5) The notice of payroll deduction shall remain in effect until released by the department or the court enters an order terminating the notice.

(6) An employer shall be liable to the obligee for the amount of court-ordered legal financial obligation moneys that should have been withheld from the offender/employee's earnings, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice; or

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served. In such cases, liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney fees, and staff costs as part of the award.

(7) No employer who complies with a notice of payroll deduction under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1991 c 93 § 5.]

**RCW 9.94A.200025 Motion to quash, modify, or terminate payroll deduction--Grounds for relief.** (1) The offender subject to a payroll deduction under this chapter, may file a

motion in superior court to quash, modify, or terminate the payroll deduction. The court may grant relief if:

(a) It is demonstrated that the payroll deduction causes extreme hardship or substantial injustice; or

(b) In cases where the court did not immediately order the issuance of a notice of payroll deduction at sentencing, that a court-ordered legal financial obligation payment was not more than thirty days past due in an amount equal to or greater than the amount payable for one month.

(2) Satisfaction by the offender of all past-due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction.

If a notice of payroll deduction has been in operation for twelve consecutive months and the offender's payment towards a court-ordered legal financial obligation is current, upon motion of the offender, the court may order the department to terminate the payroll deduction, unless the department can show good cause as to why the notice of payroll deduction should remain in effect. [1991 c 93 § 6.]

**RCW 9.94A.200030 Legal financial obligations--Order to withhold and deliver--Issuance and contents.** (1) The department may issue to any person or entity an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver. [1991 c 93 § 7.]

**RCW 9.94A.200035 Legal financial obligations--Order to withhold and deliver--Duties and rights of person or entity served.** (1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service,

under oath and in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.200050. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding. [1991 c 93 § 8.]

**RCW 9.94A.200040 Legal financial obligations--Financial institutions--Service on main office or branch, effect--Collection actions against community bank account, court hearing.** An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.145 and 9.94A.200005 through 9.94A.200050, if the department initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this

state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department contesting the withholding of his or her interest in the account or funds. The department shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department is authorized to proceed with the collection action. [1991 c 93 § 9.]

**RCW 9.94A.200045 Legal financial obligations--Notice of debt--Service or mailing--Contents--Action on, when.** (1) The department may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owned.

(6) The department shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender. [1991 c 93 § 10.]

**RCW 9.94A.200050 Legal financial obligations--Exemption from notice of payroll deduction or order to withhold and deliver.** Whenever a notice of payroll deduction or order to withhold and deliver is served upon a person or entity asserting a court-ordered legal financial obligation debt against earnings and there is in the possession of the person or entity any of the earnings, RCW 6.27.150 shall not apply, but seventy-five percent of the disposable earnings shall be exempt and may be disbursed to the offender whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there is due the offender earnings for one week or for a longer period. The notice of payroll deduction or order to withhold and deliver shall continue to operate and require said person or entity to withhold the nonexempt portion of earnings, at each succeeding earnings disbursement interval until the entire amount of the court-ordered legal financial obligation debt has been withheld. [1991 c 93 § 11.]



**RCW 9.94A.2001 Legal financial obligations--Wage assignments--Petition or motion.**

A petition or motion seeking a mandatory wage assignment in a criminal action may be filed by the department or any obligee if the offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month. The petition or motion shall include a sworn statement by the secretary or designee, or if filed solely by an obligee, by such obligee, stating the facts authorizing the issuance of the wage assignment order, including: (1) That the offender, stating his or her name and last known residence, is more than thirty days past due in payments in an amount equal to or greater than the amount payable for one month; (2) a description of the terms of the judgment and sentence and/or payment order requiring payment of a court-ordered legal financial obligation, the total amount remaining unpaid, and the amount past due; (3) the name and address of the offender's employer; (4) that notice by personal service, or any form of mail requiring a return receipt, has been provided to the offender at least fifteen days prior to the filing of a mandatory wage assignment, unless the judgment and sentence or the order for payment states that the department or obligee may seek a mandatory wage assignment without notice to the defendant. A copy of the judgment and sentence or payment order shall be attached to the petition or motion seeking the wage assignment. [1989 c 252 § 9.]

**RCW 9.94A.2002 Legal financial obligations--Wage assignments--Answer.** Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with RCW 9.94A.2001, the court shall issue a wage assignment order as provided in RCW 9.94A.2004 and including the information required in RCW 9.94A.2001, directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with RCW 9.94A.2006 within twenty days after service of the order upon the employer. [1989 c 252 § 10.]

**RCW 9.94A.2003 Legal financial obligations--Wage assignments--Amounts to be withheld.** (1) The wage assignment order in RCW 9.94A.2002 shall include: (a) The maximum amount or current amount owed on a court-ordered legal financial obligation, if any, to be withheld from the defendant's earnings each month, or from each earnings disbursement; and (b) the total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the defendant. If the amounts to be paid toward the arrearage are specified in the payment order, then the maximum amount to be withheld is the sum of the current amount owed and the amount ordered to be paid toward the arrearage, or twenty-five percent of the disposable earnings of the defendant, whichever is less.

(3) If the defendant is subject to two or more attachments for payment of a court-ordered legal financial obligation on account of different obligees, the employer shall, if the nonexempt portion of the defendant's earnings is not sufficient to respond fully to all the attachments, apportion the defendant's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the defendant's nonexempt disposable earnings upon notice to all interested parties. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute. [1989 c 252 § 11.]

**RCW 9.94A.2004 Legal financial obligations--Wage assignments--Rules.** The department shall develop a form and adopt rules for the wage assignment order. [1989 c 252 § 12.]

**RCW 9.94A.2005 Legal financial obligations--Wage assignments--Employer responsibilities.** (1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the offender is employed by or receives earnings from the employer, whether the employer will honor the wage assignment order, and whether there are multiple attachments against the offender.

(2) If the employer possesses any earnings due and owing to the offender, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order.

The employer shall deliver the withheld earnings to the clerk of the court pursuant to the wage assignment order. The employer shall make the first delivery no sooner than twenty days after receipt of the wage assignment order.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings of the offender until notified that the wage assignment has been modified or terminated. The employer shall promptly notify the clerk of the court who entered the order when the employee is no longer employed.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 9.94A.2003. The processing fee may not exceed: (a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and (b) one dollar for each subsequent disbursement made under the wage assignment order.

(5) An employer who fails to withhold earnings as required by a wage assignment order issued under this chapter may be held liable for the amounts disbursed to the offender in violation of the wage assignment order, and may be found by the court to be in contempt of court and may be punished as provided by law.

(6) No employer who complies with a wage assignment order issued under this chapter may be liable to the employee for wrongful withholding.

(7) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment order issued and executed under this chapter. A person who violates this subsection may be found by the court to be in contempt of court and may be punished as provided by law.

(8) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible. [1989 c 252 § 13.]

**RCW 9.94A.2006 Legal financial obligations--Wage assignments--Form and rules.** The department shall develop a form and adopt rules for the wage assignment answer, and instructions for employers for preparing such answer. [1989 c 252 § 14.]

**RCW 9.94A.2007 Legal financial obligations--Wage assignments--Service.** (1) Service of the wage assignment order on the employer is invalid unless it is served with five answer forms in substantial conformance with RCW 9.94A.2006, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney, the petitioner, the department, and the obligor. The petitioner shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the petitioner shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing of service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the defendant has suffered substantial injury due to the failure to mail or serve the copy. [1989 c 252 § 15.]

**RCW 9.94A.2008 Legal financial obligations--Wage assignments--Hearing--Scope of relief.** In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfaction by the defendant of all past-due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's payment towards a court-ordered legal financial obligation is current, the court may terminate the order upon motion of the obligor unless the obligee or the department can show good cause as to why the wage assignment order should remain in effect. The department shall notify the employer of any modification or termination of the wage assignment order. [1989 c 252 § 16.]

**RCW 9.94A.2009 Legal financial obligations--Wage assignments--Recovery of costs, attorneys' fees.** In any action to enforce legal financial obligations under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorneys' fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question. [1989 c 252 § 17.]

**RCW 9.94A.201 Legal financial obligations--Wage assignments--Sentences imposed before July 1, 1989.** For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94A.200. [1989 c 252 § 18.]

*Comment*

*The preceding sections were passed by the 1989 Legislature, effective July 1, 1990, to set criteria for collecting legal financial obligations by the Department of Corrections. RCW 9.94A.201 was effective in 1989 but stayed action against offenders in noncompliance with their payments on legal financial obligations until January 1990.*

**RCW 9.94A.205 Community custody--Violations.** (1) If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2)(a) For a sex offender sentenced to a term of community custody under \*RCW 9.94A.120(8) who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under \*RCW 9.94A.120(10) who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department

may impose a sanction of up to sixty days in a local correctional facility for each violation.

(c) For an offender sentenced to a term of community custody under \*RCW 9.94A.120 (5), \*(7), or (11), or under RCW 9.94A.383, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(d) For an offender sentenced to a term of community placement under \*RCW 9.94A.120(9)(a)(ii) who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(3) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4.]

**NOTES:**

**Reviser's note:** *\*(1) Effective July 1, 2001, see: RCW 9.94A.670 for the "special sex offender alternative"; RCW 9.94A.710 for "community custody for sex offenders"; RCW 9.94A.650 for the "first-time offender waiver"; and RCW 9.94A.705 for "community placement for specified offenders."*

*\*\* (2) RCW 9.94A.120 was amended by 2000 c 28 § 5, changing subsection (7) to subsection (2)(b), effective July 1, 2001.*

**Comment**

*The 1996 Legislature authorized a 60-day jail sanction, imposed administratively by the Department of Corrections, for violation of a condition of community custody imposed as part of a sentence under the Special Sex Offender Sentencing Alternative, and for violations of a condition of community custody by offenders who have completed their maximum terms of total confinement. The Department may, alternatively, refer SSOSA community custody violations to the court.*

*The 1999 Legislature, enacting the Offender Accountability Act, expanded the authority of the Department of Corrections to impose sanctions, including up to 60 days in confinement, on all offenders required to be on community custody for part of their sentence, for offenses committed on or after July 1, 2000. Offenders subject to sanctions for violations have the right to a hearing, which they may waive, before Department of Corrections hearing officers. Violation hearing officers and community corrections officers must report through separate chains of command. A violation finding cannot be based on "unconfirmed or unconfirmable allegations," and due process protections for offenders include notice, timely hearings, the right to testify or remain silent, the right to call and question witnesses and the right to present documentary evidence. A sanction takes effect if affirmed by a hearing officer, but the offender may appeal the hearing officer's decision to a panel of three reviewing officers designated by the Secretary of Corrections. The appeal panel is required to overturn sanctions that are not reasonably related to the crime of conviction; the violation committed; the offender's risk of reoffending or to the safety of the community.*

**RCW 9.94A.207 Community placement, custody violators--Arrest, detention, financial responsibility.** (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.195. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.195.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody

and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution.

(3) The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.205(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction. For confinement sanctions imposed under RCW 9.94A.205(2)(a), the local correctional facility shall be financially responsible. For confinement sanctions imposed under RCW 9.94A.205(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release. The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody, community placement, or community supervision. For confinement sanctions imposed under RCW 9.94A.205(2) (c) or (d), the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate. If the department's use of bed space in local correctional facilities of any county for confinement sanctions imposed on offenders sentenced to a term of community custody under RCW 9.94A.205(2) (c) or (d) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs. [1999 c 196 § 9; 1996 c 275 § 4; 1988 c 153 § 5.]

#### Comment

*The 1996 Legislature clarified financial responsibility between local and state correctional authorities for sex offenders sanctioned for community custody violations.*

*The 1999 Legislature directed the Department of Corrections to devise methods, after consulting with the Washington Association of Sheriffs and Police Chiefs, for determining the 1998 bed utilization rate in local jails, and to compensate counties for the use of jail beds to confine offenders for violating conditions of community custody, if such use exceeds a county's 1998 bed utilization rate.*

**RCW 9.94A.210 Which sentences appealable--Procedure--Grounds for reversal--Written opinions. (Effective until July 1, 2001.)** (1) A sentence within the standard range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first offender under RCW 9.94A.120(5) shall also be deemed to be within the standard range for the offense and shall not be appealed.

(2) A sentence outside the sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing judge are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing judges and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted. [1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21.]

***RCW 9.94A.210 Which sentences appealable--Procedure--Grounds for reversal--Written opinions. (Effective July 1, 2001.)*** (1) A sentence within the standard sentence range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted. [2000 c 28 § 10; 1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21.]



**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.220 Discharge upon completion of sentence--Certificate of discharge--Obligations, counseling after discharge.** (1) When an offender has completed the requirements of the sentence, the secretary of the department or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge.

(2) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(3) Except as provided in subsection (4) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(4) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(5) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22.]

**RCW 9.94A.230 Vacation of offender's record of conviction.** (1) Every offender who has been discharged under RCW 9.94A.220 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.220; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.220; and (f) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under RCW 9.94A.220.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that

the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. [1987 c 486 § 7; 1981 c 137 § 23.]

Comment

*While all offenders may obtain a discharge under RCW 9.94A.220, only those convicted of a nonviolent offense who have remained crime-free for a specific period may earn a vacation of their conviction. This vacation of the conviction is analogous to the dismissal obtained under RCW 9.95.240 (deferred sentence). See also RCW 9.96 (Restoration of Civil Rights) and 9.96A (Employment Rights). A vacated conviction under this statute cannot be used as criminal history. The issue of whether a vacated conviction entitles an offender to possess a firearm under state law has yet to be determined by the courts; federal law precludes such possession.*

**RCW 9.94A.250 Clemency and pardons board--Membership--Terms--Chairman--Bylaws--Travel expenses--Staff.** (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chairman from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board. [1981 c 137 § 25.]

**RCW 9.94A.260 Clemency and pardons board--Petitions for review--Hearing.** (1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to the elective rights to vote and to engage in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider written, oral,

audio, or videotaped statements regarding the petition received, personally or by representation, from the individuals who receive notice pursuant to this section. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person. [1999 c 323 § 3; 1989 c 214 § 2; 1981 c 137 § 26.]

*Comment*

*The 1999 Legislature provided that the Clemency and Pardons Board may not recommend clemency until after a public hearing, and that the prosecutor in the county where the conviction was obtained must receive at least 30 days notice of such a hearing. The 30-day notice may be waived in cases where the Board must take timely action on a petition. As to victim's rights, reasonable efforts must be made to notify victims and witnesses of Board hearings, and victims and survivors of victims must be given adequate opportunities to present statements in person, by audio or videotape, in writing or through a representative at any hearing regarding an application for a pardon or commutation of a sentence. The 1999 Legislature also amended RCW 9.95.260 to provide the same notice and hearing requirements and victims' rights protections in connection with recommendations for clemency by the Indeterminate Sentence Review Board.*

**RCW 9.94A.270 Offender supervision assessments.** (1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the terms of supervision and which shall be considered as payment or part payment of the cost of providing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982. [1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2.]

**RCW 9.94A.280 Alien offenders.** (1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and naturalization service for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee find [finds] that such release is in the best interests of the state of Washington. Further, releases under this section may occur only with the approval of the sentencing court and the prosecuting attorney of the county of conviction.

(3) No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030, or any other offense that is a crime against a person.

(4) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and naturalization service for deportation. Upon the release of an offender to the immigration and naturalization service, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect until the expiration of the offender's conditional release.

(5) Upon arrest of an offender, the department shall seek extradition as necessary and the offender shall be returned to the department for completion of the unserved portion of the offender's term of total confinement. The offender shall also be required to fully comply with all the terms and conditions of the sentence.

(6) Alien offenders released to the immigration and naturalization service for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

(7) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

(8) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington. [1993 c 419 § 1.]

#### *Comment*

*The 1993 Legislature added section RCW 9.94A.280 authorizing the Department of Corrections to release certain alien offenders to the Immigration and Naturalization Service for deportation*

**RCW 9.94A.310 Table 1--Sentencing grid. (Effective until July 1, 2001.)  
FOR CRIMES COMMITTED AFTER JULY 24, 1999**

| SERIOUSNESS<br>LEVEL | OFFENDER SCORE                             |                     |                     |                     |                      |                     |                     |                      |                      |                     |
|----------------------|--|---------------------|---------------------|---------------------|----------------------|---------------------|---------------------|----------------------|----------------------|---------------------|
|                      | 0  | 1                   | 2                   | 3                   | 4                    | 5                   | 6                   | 7                    | 8                    | 9 or more           |
| XVI                  | Life Sentence without Parole/Death Penalty |                     |                     |                     |                      |                     |                     |                      |                      |                     |
| XV                   | 23y 4m<br>240 - 320                        | 24y 4m<br>250 - 333 | 25y 4m<br>261 - 347 | 26y 4m<br>271 - 361 | 27y 4m<br>281 - 374  | 28y 4m<br>291 - 388 | 30y 4m<br>312 - 416 | 32y 10m<br>338 - 450 | 36y<br>370 - 493     | 40y<br>411 - 548    |
| XIV                  | 14y 4m<br>123 - 220                        | 15y 4m<br>134 - 234 | 16y 2m<br>144 - 244 | 17y<br>154 - 254    | 17y 11m<br>165 - 265 | 18y 9m<br>175 - 275 | 20y 5m<br>195 - 295 | 22y 2m<br>216 - 316  | 25y 7m<br>257 - 357  | 29y<br>298 - 397    |
| XIII                 | 14y 4m<br>123 - 164                        | 15y 4m<br>134 - 178 | 16y 2m<br>144 - 192 | 17y<br>154 - 205    | 17y 11m<br>165 - 219 | 18y 9m<br>175 - 233 | 20y 5m<br>195 - 260 | 22y 2m<br>216 - 288  | 25y 7m<br>257 - 342  | 29y<br>298 - 397    |
| XII                  | 9y<br>93 - 123                             | 9y 11m<br>102 - 136 | 10y 9m<br>111 - 147 | 11y 8m<br>120 - 160 | 12y 6m<br>129 - 171  | 13y 5m<br>138 - 184 | 15y 9m<br>162 - 216 | 17y 3m<br>178 - 236  | 20y 3m<br>209 - 277  | 23y 3m<br>240 - 318 |
| XI                   | 7y 6m<br>78 - 102                          | 8y 4m<br>86 - 114   | 9y 2m<br>95 - 125   | 9y 11m<br>102 - 136 | 10y 9m<br>111 - 147  | 11y 7m<br>120 - 158 | 14y 2m<br>146 - 194 | 15y 5m<br>159 - 211  | 17y 11m<br>185 - 245 | 20y 5m<br>210 - 280 |
| X                    | 5y<br>51 - 68                              | 5y 6m<br>57 - 75    | 6y<br>62 - 82       | 6y 6m<br>67 - 89    | 7y<br>72 - 96        | 7y 6m<br>77 - 102   | 9y 6m<br>98 - 130   | 10y 6m<br>108 - 144  | 12y 6m<br>129 - 171  | 14y 6m<br>149 - 198 |
| IX                   | 3y<br>31 - 41                              | 3y 6m<br>36 - 48    | 4y<br>41 - 54       | 4y 6m<br>46 - 61    | 5y<br>51 - 68        | 5y 6m<br>57 - 75    | 7y 6m<br>77 - 102   | 8y 6m<br>87 - 116    | 10y 6m<br>108 - 144  | 12y 6m<br>129 - 171 |
| VIII                 | 2y<br>21 - 27                              | 2y 6m<br>26 - 34    | 3y<br>31 - 41       | 3y 6m<br>36 - 48    | 4y<br>41 - 54        | 4y 6m<br>46 - 61    | 6y 6m<br>67 - 89    | 7y 6m<br>77 - 102    | 8y 6m<br>87 - 116    | 10y 6m<br>108 - 144 |
| VII                  | 18m<br>15 - 20                             | 2y<br>21 - 27       | 2y 6m<br>26 - 34    | 3y<br>31 - 41       | 3y 6m<br>36 - 48     | 4y<br>41 - 54       | 5y 6m<br>57 - 75    | 6y 6m<br>67 - 89     | 7y 6m<br>77 - 102    | 8y 6m<br>87 - 116   |
| VI                   | 13m<br>12+ - 14                            | 18m<br>15 - 20      | 2y<br>21 - 27       | 2y 6m<br>26 - 34    | 3y<br>31 - 41        | 3y 6m<br>36 - 48    | 4y 6m<br>46 - 61    | 5y 6m<br>57 - 75     | 6y 6m<br>67 - 89     | 7y 6m<br>77 - 102   |
| V                    | 9m<br>6 - 12                               | 13m<br>12+ - 14     | 15m<br>13 - 17      | 18m<br>15 - 20      | 2y 2m<br>22 - 29     | 3y 2m<br>33 - 43    | 4y<br>41 - 54       | 5y<br>51 - 68        | 6y<br>62 - 82        | 7y<br>72 - 96       |
| IV                   | 6m<br>3 - 9                                | 9m<br>6 - 12        | 13m<br>12+ - 14     | 15m<br>13 - 17      | 18m<br>15 - 20       | 2y 2m<br>22 - 29    | 3y 2m<br>33 - 43    | 4y 2m<br>43 - 57     | 5y 2m<br>53 - 70     | 6y 2m<br>63 - 84    |
| III                  | 2m<br>1 - 3                                | 5m<br>3 - 8         | 8m<br>4 - 12        | 11m<br>9 - 12       | 14m<br>12+ - 16      | 20m<br>17 - 22      | 2y 2m<br>22 - 29    | 3y 2m<br>33 - 43     | 4y 2m<br>43 - 57     | 5y<br>51 - 68       |
| II                   | 0 - 90<br>Days                             | 4m<br>2 - 6         | 6m<br>3 - 9         | 8m<br>4 - 12        | 13m<br>12+ - 14      | 16m<br>14 - 18      | 20m<br>17 - 22      | 2y 2m<br>22 - 29     | 3y 2m<br>33 - 43     | 4y 2m<br>43 - 57    |
| I                    | 0 - 60<br>Days                             | 0 - 90<br>Days      | 3m<br>2 - 5         | 4m<br>2 - 6         | 5m<br>3 - 8          | 8m<br>4 - 12        | 13m<br>12+ - 14     | 16m<br>14 - 18       | 20m<br>17 - 22       | 2y 2m<br>22 - 29    |

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) Three years for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Eighteen months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, any and all firearm enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.150(4).

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the presumptive sentence for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon as defined in this chapter other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period

of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9A.1010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) One year for any felony defined under any law as a class B felony or with a maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Six months for any felony defined under any law as a class C felony or with a maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, any and all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, any and all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.150(4).

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the presumptive sentence under this section exceeds the statutory maximum for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender as defined in RCW 9.94A.030. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the presumptive sentence if the offender or an accomplice committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the presumptive sentence determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1) (i) or (ii) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1) (iii), (iv), and (v);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW

69.50.435 or 9.94A.128.

(7) An additional two years shall be added to the presumptive sentence for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. [2000 c 132 § 2. Prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2.]

#### Comment

*The 1986 amendments provided that the 12-month deadly weapon penalty applies to those offenses defined in RCW 9.94A.030 as drug offenses, instead of applying only to Delivery or Possession of a Controlled Substance with Intent to Deliver. The term "drug offense," as defined in the SRA, excludes simple possession, forged prescriptions and violations of the Legend Drug Act.*

*The 1986 revisions also clarified that the deadly weapon penalties apply to anticipatory offenses.*

*The 1989 Legislature added two enhancements for some drug crimes committed in certain locations: (1) violations of RCW 69.50.401(a) committed within 1,000 feet of a school or school bus zone, and (2) violations of RCW 69.50.401(a) or (d) committed within a county jail or state correctional facility.*

*The 1990 Legislature amended the sentencing grid to add a new Level XII, and renumber Levels XII through XIV. The sentence ranges in Level XI were increased.*

*The 1990 Legislature amended the enhancement for certain drug crimes near schools to also apply to Manufacture, Delivery, and Possession with Intent to Deliver in parks, public transit vehicles and transit stop shelters (RCW 69.50.435).*

*The 1992 Legislature added Assault of a Child 2 to the crimes eligible for deadly weapon penalties.*

*The 1994 Legislature amended subsection (4)(c) to apply the previous 12-month deadly weapon enhancement to all violent offenses not subject to a longer enhancement. This was repealed and replaced in 1995 by Initiative 159.*

*The enactment of Initiative Measure No. 159 by the 1995 Legislature split the previous deadly weapon enhancement into separate enhancements for firearms and for other deadly weapons, and broadened their application to all felonies except those in which using a firearm is an element of the offense. The enhancements double when the offender has previously (but on or after July 23, 1995) been sentenced to a deadly weapon enhancement under (3) or (4). The enhancements must run consecutively to any other sentence, as long as the period of total confinement does not exceed the statutory maximum for the offense. The amendments increased the enhancement (where the weapon is not a firearm) for Burglary 1 from 18 months to two years and reduced the enhancement for Theft of Livestock 2 from one year to six months.*

*Although the 1995 amendments to subsections (3) and (4) in Initiative 159 prohibit weapon enhancements from running concurrently to other sentencing provisions, the Initiative did not amend RCW 9.94A.400, which provides for concurrent sentencing of multiple counts except*



*under circumstances specified in that section.*

*Subsections (3) and (4) limit the total sentence for each count to the statutory maximum, even with weapon enhancements. However, it is unclear whether the maximum consists of the entire weapon enhancement plus the remainder of the base sentence, or of the base sentence plus whatever part of the weapon enhancement remains within the maximum. This issue is especially important in multiple-count cases, where the statutory maximum for the most serious count would limit the total sentence in the absence of weapon enhancements, but may not if weapon enhancements are computed consecutively.*

*The 1996 Legislature increased from 15 months to 18 months the enhancement for Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver Methamphetamine in a county jail or state correctional facility. The Legislature also authorized local governments to designate additional “drug free zones” at or around defined “civic centers,” under RCW 69.50.435, for purposes of the 24-month enhancement for drug offenses committed within such areas.*

*The 1998 Legislature clarified that when an offender is being sentenced for more than one offense, the firearm enhancement or enhancements and or deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to the enhancement. This takes effect for crimes committed on or after June 11, 1998.*

*The 1998 Legislature also clarified that for all offenses sentenced under RCW 9.94A.310, all firearm or deadly weapon enhancements run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements. This takes effect for crimes committed on or after June 11, 1998.*

*The 1998 Legislature required that an additional two years be added to the presumptive sentence for Vehicular Homicide committed while under the Influence of Intoxicating Liquor or any Drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.*

*The 1998 Legislature required that if the firearm enhancement or the deadly weapon enhancement increases a sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. As a result, in such a case the underlying sentence must be reduced so that the total confinement time does not exceed the statutory maximum. This takes effect for crimes committed on or after June 11, 1998.*

*The Supreme Court of Washington in Post Sentencing Review of Charles, 135 Wn.2d 239 (1998), ruled that when two or more offenses each carry firearm enhancements, the determination of whether multiple current sentences are to run concurrently or consecutively is governed by RCW 9.94A.400.*

*In State v. Barajas, 88 Wn. App. 387 (1997), the Court of Appeals ruled that when a convicted drug offender is subject to both RCW 69.50.435 (which doubles the maximum sentence that may be imposed for a drug offense committed in or near a public place or facility as specified by the statute) and RCW 9.94A.310(3) (which mandates enhanced sentences for offenses committed while armed with a firearm), the maximum sentence on which to determine the length of the firearm enhancement is the statutory maximum for the offenses as doubled by RCW 69.50.435.*

*The 1997 Legislature increased the maximum term of total confinement in the standard range for Level XIII. However, the minimum term in that range applied only to sentences for Murder 2 because the Legislature amended limiting language in RCW 9.94A.040(4)(b) only for Murder 2 offenses. The new standard ranges for Murder 2 applied to crimes committed on or after July 27, 1997. The 1999 Legislature resolved the conflict within Level XIII that arose after the 1997 legislative session. A new Level XIV was created for Murder 2 only, with its unique “range widths” as outlined in 9.94A.040(4)(b). The “range widths” for the offenses remaining at Level XIII were returned to their pre-1997 status, and offenses previously at Levels XIV and XV were moved up to Level XV and a new Level XVI, respectively (for offenses committed on or after July 25, 1999).*

*The 1999 Legislature provided exceptions to serving mandatory minimum sentences in total confinement for offenders granted an “extraordinary medical placement” authorized under RCW 9.94A.150(4).*

**RCW 9.94A.310 Table 1--Sentencing grid. (Effective July 1, 2001.)  
FOR CRIMES COMMITTED AFTER JULY 24, 1999**

| SERIOUSNESS<br>LEVEL | OFFENDER SCORE                             |                     |                     |                     |                      |                     |                     |                      |                      |                     |
|----------------------|--|---------------------|---------------------|---------------------|----------------------|---------------------|---------------------|----------------------|----------------------|---------------------|
|                      | 0  | 1                   | 2                   | 3                   | 4                    | 5                   | 6                   | 7                    | 8                    | 9 or more           |
| XVI                  | Life Sentence without Parole/Death Penalty |                     |                     |                     |                      |                     |                     |                      |                      |                     |
| XV                   | 23y 4m<br>240 - 320                        | 24y 4m<br>250 - 333 | 25y 4m<br>261 - 347 | 26y 4m<br>271 - 361 | 27y 4m<br>281 - 374  | 28y 4m<br>291 - 388 | 30y 4m<br>312 - 416 | 32y 10m<br>338 - 450 | 36y<br>370 - 493     | 40y<br>411 - 548    |
| XIV                  | 14y 4m<br>123 - 220                        | 15y 4m<br>134 - 234 | 16y 2m<br>144 - 244 | 17y<br>154 - 254    | 17y 11m<br>165 - 265 | 18y 9m<br>175 - 275 | 20y 5m<br>195 - 295 | 22y 2m<br>216 - 316  | 25y 7m<br>257 - 357  | 29y<br>298 - 397    |
| XIII                 | 14y 4m<br>123 - 164                        | 15y 4m<br>134 - 178 | 16y 2m<br>144 - 192 | 17y<br>154 - 205    | 17y 11m<br>165 - 219 | 18y 9m<br>175 - 233 | 20y 5m<br>195 - 260 | 22y 2m<br>216 - 288  | 25y 7m<br>257 - 342  | 29y<br>298 - 397    |
| XII                  | 9y<br>93 - 123                             | 9y 11m<br>102 - 136 | 10y 9m<br>111 - 147 | 11y 8m<br>120 - 160 | 12y 6m<br>129 - 171  | 13y 5m<br>138 - 184 | 15y 9m<br>162 - 216 | 17y 3m<br>178 - 236  | 20y 3m<br>209 - 277  | 23y 3m<br>240 - 318 |
| XI                   | 7y 6m<br>78 - 102                          | 8y 4m<br>86 - 114   | 9y 2m<br>95 - 125   | 9y 11m<br>102 - 136 | 10y 9m<br>111 - 147  | 11y 7m<br>120 - 158 | 14y 2m<br>146 - 194 | 15y 5m<br>159 - 211  | 17y 11m<br>185 - 245 | 20y 5m<br>210 - 280 |
| X                    | 5y<br>51 - 68                              | 5y 6m<br>57 - 75    | 6y<br>62 - 82       | 6y 6m<br>67 - 89    | 7y<br>72 - 96        | 7y 6m<br>77 - 102   | 9y 6m<br>98 - 130   | 10y 6m<br>108 - 144  | 12y 6m<br>129 - 171  | 14y 6m<br>149 - 198 |
| IX                   | 3y<br>31 - 41                              | 3y 6m<br>36 - 48    | 4y<br>41 - 54       | 4y 6m<br>46 - 61    | 5y<br>51 - 68        | 5y 6m<br>57 - 75    | 7y 6m<br>77 - 102   | 8y 6m<br>87 - 116    | 10y 6m<br>108 - 144  | 12y 6m<br>129 - 171 |
| VIII                 | 2y<br>21 - 27                              | 2y 6m<br>26 - 34    | 3y<br>31 - 41       | 3y 6m<br>36 - 48    | 4y<br>41 - 54        | 4y 6m<br>46 - 61    | 6y 6m<br>67 - 89    | 7y 6m<br>77 - 102    | 8y 6m<br>87 - 116    | 10y 6m<br>108 - 144 |
| VII                  | 18m<br>15 - 20                             | 2y<br>21 - 27       | 2y 6m<br>26 - 34    | 3y<br>31 - 41       | 3y 6m<br>36 - 48     | 4y<br>41 - 54       | 5y 6m<br>57 - 75    | 6y 6m<br>67 - 89     | 7y 6m<br>77 - 102    | 8y 6m<br>87 - 116   |
| VI                   | 13m<br>12+ - 14                            | 18m<br>15 - 20      | 2y<br>21 - 27       | 2y 6m<br>26 - 34    | 3y<br>31 - 41        | 3y 6m<br>36 - 48    | 4y 6m<br>46 - 61    | 5y 6m<br>57 - 75     | 6y 6m<br>67 - 89     | 7y 6m<br>77 - 102   |
| V                    | 9m<br>6 - 12                               | 13m<br>12+ - 14     | 15m<br>13 - 17      | 18m<br>15 - 20      | 2y 2m<br>22 - 29     | 3y 2m<br>33 - 43    | 4y<br>41 - 54       | 5y<br>51 - 68        | 6y<br>62 - 82        | 7y<br>72 - 96       |
| IV                   | 6m<br>3 - 9                                | 9m<br>6 - 12        | 13m<br>12+ - 14     | 15m<br>13 - 17      | 18m<br>15 - 20       | 2y 2m<br>22 - 29    | 3y 2m<br>33 - 43    | 4y 2m<br>43 - 57     | 5y 2m<br>53 - 70     | 6y 2m<br>63 - 84    |
| III                  | 2m<br>1 - 3                                | 5m<br>3 - 8         | 8m<br>4 - 12        | 11m<br>9 - 12       | 14m<br>12+ - 16      | 20m<br>17 - 22      | 2y 2m<br>22 - 29    | 3y 2m<br>33 - 43     | 4y 2m<br>43 - 57     | 5y<br>51 - 68       |
| II                   | 0 - 90<br>Days                             | 4m<br>2 - 6         | 6m<br>3 - 9         | 8m<br>4 - 12        | 13m<br>12+ - 14      | 16m<br>14 - 18      | 20m<br>17 - 22      | 2y 2m<br>22 - 29     | 3y 2m<br>33 - 43     | 4y 2m<br>43 - 57    |
| I                    | 0 - 60<br>Days                             | 0 - 90<br>Days      | 3m<br>2 - 5         | 4m<br>2 - 6         | 5m<br>3 - 8          | 8m<br>4 - 12        | 13m<br>12+ - 14     | 16m<br>14 - 18       | 20m<br>17 - 22       | 2y 2m<br>22 - 29    |

*Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12+ equals one year and one day.*

*(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.*

*(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:*

*(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.*

*(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection.*

*(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection.*

*(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed.*

*(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.150(4).*

*(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.*

*(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.*

*(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon*

enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9A.01.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection.

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection.

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection.

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed.

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9A.41.150(4).

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(a)(1) (i) or (ii) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(a)(1) (iii), (iv), and (v);

(c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) *An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.128.*

(7) *An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. [2000 c 132 § 2; 2000 c 28 § 11. Prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2.]*

**NOTES:**

**Reviser's note:** This section was amended by 2000 c 28 § 11 and by 2000 c 132 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.320 Table 2--Crimes included within each seriousness level.**

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

|      |  |
|------|--|
| XVI  | Aggravated Murder 1 (RCW 10.95.020)  |
| XV   | Homicide by abuse (RCW 9A.32.055)<br>Malicious explosion 1 (RCW 70.74.280(1))<br>Murder 1 (RCW 9A.32.030)  |
| XIV  | Murder 2 (RCW 9A.32.050)   |
| XIII | Malicious explosion 2 (RCW 70.74.280(2))<br>Malicious placement of an explosive 1 (RCW 70.74.270(1))   |
| XII  | Assault 1 (RCW 9A.36.011)<br>Assault of a Child 1 (RCW 9A.36.120)<br>Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))<br>Rape 1 (RCW 9A.44.040)<br>Rape of a Child 1 (RCW 9A.44.073) |
| XI   | Manslaughter 1 (RCW 9A.32.060)<br>Rape 2 (RCW 9A.44.050)<br>Rape of a Child 2 (RCW 9A.44.076)  |
| X    | Child Molestation 1 (RCW 9A.44.083)<br>Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))<br>Kidnapping 1 (RCW 9A.40.020)<br>Leading Organized Crime (RCW 9A.82.060(1)(a))            |

- Malicious explosion 3 (RCW 70.74.280(3))
- Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))
- Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- IX
  - Assault of a Child 2 (RCW 9A.36.130)
  - Controlled Substance Homicide (RCW 69.50.415)
  - Explosive devices prohibited (RCW 70.74.180)
  - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
  - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
  - Malicious placement of an explosive 2 (RCW 70.74.270(2))
  - Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
  - Robbery 1 (RCW 9A.56.200)
  - Sexual Exploitation (RCW 9.68A.040)
  - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII
  - Arson 1 (RCW 9A.48.020)
  - Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
  - Hit and Run--Death (RCW 46.52.020(4)(a))
  - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
  - Manslaughter 2 (RCW 9A.32.070)
  - Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
  - Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
  - Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440)
  - Promoting Prostitution 1 (RCW 9A.88.070)
  - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
  - Theft of Anhydrous Ammonia (RCW 69.55.010)
  - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII
  - Burglary 1 (RCW 9A.52.020)
  - Child Molestation 2 (RCW 9A.44.086)
  - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
  - Drive-by Shooting (RCW 9A.36.045)
  - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)

- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
  - Introducing Contraband 1 (RCW 9A.76.140)
  - Involving a minor in drug dealing (RCW 69.50.401(f))
  - Malicious placement of an explosive 3 (RCW 70.74.270(3))
  - Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
  - Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
  - Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
  - Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
  - Bribery (RCW 9A.68.010)
  - Incest 1 (RCW 9A.64.020(1))
  - Intimidating a Judge (RCW 9A.72.160)
  - Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
  - Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
  - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
  - Rape of a Child 3 (RCW 9A.44.079)
  - Theft of a Firearm (RCW 9A.56.300)
  - Unlawful Storage of Anhydrous Ammonia (RCW 69.55.020)
- V
- Abandonment of dependent person 1 (RCW 9A.42.060)
  - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
  - Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
  - Child Molestation 3 (RCW 9A.44.089)
  - Criminal Mistreatment 1 (RCW 9A.42.020)
  - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
  - Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
  - Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
  - Extortion 1 (RCW 9A.56.120)
  - Extortionate Extension of Credit (RCW 9A.82.020)
  - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
  - Incest 2 (RCW 9A.64.020(2))
  - Kidnapping 2 (RCW 9A.40.030)
  - Perjury 1 (RCW 9A.72.020)
  - Persistent prison misbehavior (RCW 9.94.070)
  - Possession of a Stolen Firearm (RCW 9A.56.310)



- Rape 3 (RCW 9A.44.060)
  - Rendering Criminal Assistance 1 (RCW 9A.76.070)
  - Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
  - Sexually Violating Human Remains (RCW 9A.44.105)
  - Stalking (RCW 9A.46.110)
- IV
- Arson 2 (RCW 9A.48.030)
  - Assault 2 (RCW 9A.36.021)
  - Assault by Watercraft (RCW 9A.60.060)
  - Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
  - Commercial Bribery (RCW 9A.68.060)
  - Counterfeiting (RCW 9A.16.035(4))
  - Escape 1 (RCW 9A.76.110)
  - Hit and Run--Injury (RCW 46.52.020(4)(b))
  - Hit and Run with Vessel--Injury Accident (RCW 9A.60.200(3))
  - Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
  - Influencing Outcome of Sporting Event (RCW 9A.82.070)
  - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
  - Malicious Harassment (RCW 9A.36.080)
  - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(a)(1) (iii) through (v))
  - Residential Burglary (RCW 9A.52.025)
  - Robbery 2 (RCW 9A.56.210)
  - Theft of Livestock 1 (RCW 9A.56.080)
  - Threats to Bomb (RCW 9A.61.160)
  - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
  - Vehicular Assault (RCW 46.61.522)
  - Willful Failure to Return from Furlough (RCW 72.66.060)
- III
- Abandonment of dependent person 2 (RCW 9A.42.070)
  - Assault 3 (RCW 9A.36.031)
  - Assault of a Child 3 (RCW 9A.36.140)
  - Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
  - Burglary 2 (RCW 9A.52.030)
  - Communication with a Minor for Immoral Purposes (RCW 9A.68A.090)
  - Criminal Gang Intimidation (RCW 9A.46.120)
  - Criminal Mistreatment 2 (RCW 9A.42.030)
  - Custodial Assault (RCW 9A.36.100)
  - Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))

Escape 2 (RCW 9A.76.120)  
 Extortion 2 (RCW 9A.56.130)  
 Harassment (RCW 9A.46.020)  
 Intimidating a Public Servant (RCW 9A.76.180)  
 Introducing Contraband 2 (RCW 9A.76.150)  
 Maintaining a Dwelling or Place for Controlled Substances  
 (RCW 69.50.402(a)(6))  
 Malicious Injury to Railroad Property (RCW 81.60.070)  
 Manufacture, deliver, or possess with intent to deliver marijuana  
 (RCW 69.50.401(a)(1)(iii))  
 Manufacture, distribute, or possess with intent to distribute an  
 imitation controlled substance (RCW 69.52.030(1))  
 Patronizing a Juvenile Prostitute (RCW 9.68A.100)  
 Perjury 2 (RCW 9A.72.030)  
 Possession of Incendiary Device (RCW 9.40.120)  
 Possession of Machine Gun or Short-Barreled Shotgun or Rifle  
 (RCW 9.41.190)  
 Promoting Prostitution 2 (RCW 9A.88.080)  
 Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))  
 Securities Act violation (RCW 21.20.400)  
 Tampering with a Witness (RCW 9A.72.120)  
 Telephone Harassment (subsequent conviction or threat of  
 death) (RCW 9.61.230)  
 Theft of Livestock 2 (RCW 9A.56.080)  
 Unlawful Imprisonment (RCW 9A.40.040)  
 Unlawful possession of firearm in the second degree (RCW  
 9.41.040(1)(b))  
 Unlawful Use of Building for Drug Purposes (RCW 69.53.010)  
 Willful Failure to Return from Work Release (RCW 72.65.070)

- II
- Computer Trespass 1 (RCW 9A.52.110)
  - Counterfeiting (RCW 9.16.035(3))
  - Create, deliver, or possess a counterfeit controlled substance  
 (RCW 69.50.401(b))
  - Escape from Community Custody (RCW 72.09.310)
  - Health Care False Claims (RCW 48.80.030)
  - Malicious Mischief 1 (RCW 9A.48.070)
  - Possession of controlled substance that is either heroin or  
 narcotics from Schedule I or II or flunitrazepam from  
 Schedule IV (RCW 69.50.401(d))
  - Possession of phencyclidine (PCP) (RCW 69.50.401(d))
  - Possession of Stolen Property 1 (RCW 9A.56.150)
  - Theft 1 (RCW 9A.56.030)
  - Theft of Rental, Leased, or Lease-purchased Property (valued  
 at one thousand five hundred dollars or more) (RCW  
 9A.56.096(4))
  - Trafficking in Insurance Claims (RCW 48.30A.015)
  - Unlawful Practice of Law (RCW 2.48.180)
  - Unlicensed Practice of a Profession or Business (RCW

18.130.190(7))

- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam) (RCW 69.50.401(d))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- Vehicle Prowl 1 (RCW 9A.52.095)

[2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2. Prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3.]

**NOTES:**

**Reviser's note:** This section was amended by 2000 c 66 § 2, 2000 c 119 § 17, and by 2000 c 225 § 5, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Comment**

**Crime Label:** Offense seriousness is established by the actual crime of conviction. The crime of conviction is therefore far more significant in determining a sentence than under the former indeterminate system.

**Crime Ranking:** One of the most significant and time-consuming decisions made by the Commission was its ranking of crimes by seriousness. The three mandatory minimum sentences originally established by the Sentencing Reform Act (First Degree Murder, First Degree Assault, First Degree Rape) served as bench marks for the Commission's work. The Commission was also assisted by the general felony classifications established by the Legislature (classes A, B and C felonies-RCW 9A.20.020). The Commission decided that given the law's emphasis on violent crimes, the seriousness levels needed to reflect this priority. Certain Class C felonies were eventually ranked higher than some Class B felonies because they constituted a crime against a

person.

***Offense Date:** The date of the offense is important because it establishes whether the guidelines apply to a particular offender's case. If the date of offense is on or before June 30, 1984, the Indeterminate Sentence Review Board and its successors must make decisions with reference to the purposes, standards, and ranges of the Sentencing Reform Act and the minimum term recommendations of the sentencing judge and prosecuting attorney. See *In Re Myers*, 105 Wn.2d 257 (1986). The date of the offense also influences what portion of an offender's juvenile record will be used to calculate criminal history.*

***Ranked Felonies:** The most common felonies have been included in the Seriousness Level Table. The Commission decided not to rank certain felonies that seldom occur. The Commission will continue to recommend adjustments in seriousness levels as new felonies are created by the Legislature. If a significant number of persons are convicted of offenses not included in the Seriousness Level table, the Commission will recommend to the Legislature ranking those offenses at the appropriate seriousness levels. In 1999, the Commission recommended, and the Legislature enacted, legislation that ranked certain previously unranked felonies on the sentencing grid.*

*The 1990 Legislature created an additional seriousness level at Level XI, and renumbered Levels XI through XIV, making these Levels XII through XV.*

*The 1994 Legislature created a new Class C felony offense, Theft of a Firearm (RCW 9A.56.300) at Level V, and increased the severity of Reckless Endangerment 1 (RCW 9A.36.045) from Level II to Level V. These amendments to this section were repealed and replaced in 1995 by Initiative Measure No. 159.*

*The 1994 Legislature increased the severity level of Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.520) from Level VIII to Level IX. Vehicular Homicide by Operating a Vehicle in a Reckless Manner remains at Level VIII.*

*The enactment of Initiative Measure No. 159 by the 1995 Legislature made numerous changes in definitions and seriousness levels of felonies involving firearms:*

- ?? Increased the seriousness level of Reckless Endangerment 1 from Level V to Level VII.*
- ?? Expanded the definition of Burglary 1 to cover entry into a non-residential building.*
- ?? Increased the seriousness level of Theft of a Firearm from a Class C felony at Level V to a Class B felony at Level VI.*
- ?? Created the Class B felony of Possessing a Stolen Firearm at Level V.*
- ?? Narrowed the definitions of Theft and Possession of Stolen Property to exclude Theft or Possession of a Firearm.*
- ?? Created two degrees of Unlawful Possession of a Firearm. Unlawful Possession of a Firearm 1 is a Class B felony at Level VII. Unlawful Possession of a Firearm 2 is a Class C felony at Level III. See RCW 9A.10.040.*
- ?? Authorized separate convictions for Theft of a Firearm, Possession of a Stolen Firearm, and Unlawful Possession of a Firearm arising from the same actions, required that sentences for each of these offenses run consecutively, and provided that each firearm constitutes a separate offense.*
- ?? Expanded the definition of Aggravated Murder 1, subject to the death penalty, to include gang-related murders, "drive-by" shootings and murders to avoid prosecution as a persistent*

*("third strike") offender.*

*The 1995 Legislature created the Class C felony offense of Persistent Prison Misbehavior, ranked at Level V (see RCW 9.94.070).*

*The 1995 Legislature created several new felony offenses: Commercial Bribery (Class B at Level IV, see RCW 9A.68.060), Unlawful Practice of Law (Class C at Level II after the first violation, see RCW 2.48.180), Trafficking in Insurance Claims (Class C at Level II after the first violation, see RCW 48.30A.015), and Unlicensed Practice of a Profession or Business (Class C at Level II after the first violation, see RCW 18.130.190).*

*Health Care False Claims, a Class C felony, was ranked at Level II in 1995 (see RCW 48.80.030).*

*The 1996 Legislature created the following new ranked offenses: Possession of Ephedrine or Pseudoephedrine with Intent to Manufacture Methamphetamine, a Class B felony at Level VIII; Hit and Run with Vessel - Injury Accident, a Class C felony at Level IV; Abandonment of a Dependent Person 1, a Class B felony at Level V; and Abandonment of a Dependent Person 2, a Class C felony at Level III.*

*The 1997 Legislature increased the seriousness of Rape 1 and Rape of a Child 1 to Level XII, Rape 2 and Rape of a Child 2 to Level XI, and Indecent Liberties with force to Level X. The Legislature also increased the seriousness of Manslaughter 1 to Level XI and Manslaughter 2 to Level VIII.*

*The 1997 Legislature added new offenses relating to explosives and imitation explosives at Levels VI, VII, IX, X, XII, XIII and XIV.*

*The 1997 Legislature also added new felonies: Criminal Gang Intimidation at Level III, and Theft of Rental Property at Levels I and II. The Legislature also redesignated Reckless Endangerment 1 (at Level VII) as "Drive-by Shooting."*

*The 1998 Legislature added new felonies: Homicide by Watercraft, by being under the Influence of Intoxicating Liquor or any Drug at Level IX; Homicide by Watercraft, by the Operation of any Vessel in a Reckless Manner at Level VIII; Homicide by Watercraft, by Disregard for the Safety of Others at Level VII; and Assault by Watercraft at Level IV.*

*The 1998 Legislature also enacted and ranked three new felonies involving the drug Flunitrazepam (commonly known as Rohypnol). The Possession of Flunitrazepam is ranked at Level II (RCW 69.50.401(d)). The Manufacture, Delivery or Possession with Intent to Deliver Flunitrazepam is ranked at Level VI (RCW 69.50.401(1)(iii) through (v)). The Delivery of Flunitrazepam by a Person over 18 Years of Age to a Person less than 18 Years of Age is ranked at Level X (RCW 69.50.406).*

*In addition, the 1998 Legislature increased the seriousness level of Manufacture, Delivery or Possession with Intent to Deliver Amphetamine from Level IV to Level VIII (RCW 69.50.401(a)(1)(ii)) and increased the seriousness level for Manufacturing Methamphetamine from Level VIII to Level X (RCW 69.50.401(a)(1)(ii)).*

*The 1999 Legislature amended Table 2 in RCW 9.94A.320 to add Seriousness Level XVI and to adjust the list of crimes in Levels XIII, XIV, XV and XVI to correspond to the 1999 amendments to the sentencing grid in RCW 9.94A.310.*

*The 1999 Legislature ranked some previously unranked felonies and created some new felonies, and listed them accordingly by Seriousness Level in Table 2 of RCW 9.94A.320, including: Over 18 and Deliver Methamphetamine to Persons Under 18 at Level X (RCW 69.50.406); Use of a Machine Gun in Commission of a Felony at Level VII (RCW 9.41.225); Custodial Sexual Misconduct I at Level V (RCW 9A.44.160); Stalking (on or after July 1, 2000) at Level V (RCW 9A.46.110); No-Contact Order Violation: Domestic Violence Pre-Trial Condition (on or after July 1, 2000) at Level V (RCW 10.99.040(4)(b) and (c)); No-Contact Order Violation: Domestic Violence Sentence Condition (on or after July 1, 2000) at Level V (RCW 10.99.050(2)); Protection Order Violation: Domestic Violence Civil Action (on or after July 1, 2000) at Level V (RCW 26.50.110(4) and (5)); Indecent Exposure to Person Under Age 14 (repeat offense or with previous sex offense) at Level IV (RCW 9A.88.010); Counterfeiting While Endangering Public Health and Safety at Level IV (RCW 9.16.035(4)); Maintaining a Dwelling or Place for Controlled Substances at Level III (RCW 69.50.402(a)(6)); Malicious Injury to Railroad Property at Level III (RCW 81.60.070); Possession of an Incendiary Device at Level III (RCW 9.40.120); Possession of a Machine Gun or Short-Barreled Shotgun or Rifle at Level III (RCW 9.41.190); Telephone Harassment (subsequent conviction or threat of death) at Level III (RCW 9.61.230); Unlawful Use of Building for Drug Purposes at Level III (RCW 69.53.010); and Counterfeiting (with two or more previous convictions and more than 1000 counterfeit items with a retail value of \$10,000 or more) at Level I (RCW 9.16.035(3)).*

## RECOMMENDED SENTENCING GUIDELINES

**RCW 9.94A.340 Equal application.** The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. [1983 c 115 § 5.]

**RCW 9.94A.345 Timing.** Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed. [2000 c 26 § 2.]

### NOTES:

*Intent--2000 c 26: "RCW 9.94A.345 is intended to cure any ambiguity that might have led to the Washington supreme court's decision in State v. Cruz, Cause No. 67147-8 (October 7, 1999). A decision as to whether a prior conviction shall be included in an individual's offender score should be determined by the law in effect on the day the current offense was committed. RCW 9.94A.345 is also intended to clarify the applicability of statutes creating new sentencing alternatives or modifying the availability of existing alternatives." [2000 c 26 § 1.]*

**RCW 9.94A.350 Offense seriousness level.** The offense seriousness level is determined by the offense of conviction. [1990 c 3 § 703; 1983 c 115 § 6.]

**RCW 9.94A.360 Offender score. (Effective until July 1, 2001.)** The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually

considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction.

(12) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.



(13) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, Willful Failure to Return from Work Release, RCW 72.65.070, or Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(14) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(15) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point. [1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5. Prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7.]

#### **NOTES:**

**Reviser's note:** This section was amended by 1999 c 331 § 1 and by 1999 c 352 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

#### **Comment**

**Misdemeanors:** The Commission decided not to include misdemeanors in the offender score for two reasons: 1) the emphasis of the legislation was on felonies, and 2) the reliability of court records varies greatly throughout the state. An exception to this policy was made in the case of felony traffic offenses. The Commission decided that for these crimes, previous serious driving misdemeanors are relevant in establishing the offender's history of similar behavior.

The Commission anticipates that in some instances an offender's history of misdemeanors may be used by the court in selecting a sentence within the standard sentence range or in departing from the range to administer an exceptional sentence.

**Role of Criminal History:** The Commission's mandate from the Legislature was to consider both the seriousness of the crime and the nature and extent of criminal history. The Commission decided to emphasize the current offense in establishing standard sentence ranges but also to give weight to a person's past convictions, including the pattern of those convictions. Given the legislation's emphasis on sanctions for violent crimes, the Commission decided that repeat violent offenders needed to be identified and dealt with severely. As a result, the grid places an accelerated emphasis on criminal history for the repeat violent offender.

**Prior Offenses:** The Commission decided that the weighing of prior offenses should vary depending on the present offense. Thus, a criminal history with serious violent crime convictions counts most heavily when the current offense is also a serious violent offense; previous convictions for violent offenses count more heavily when the current offense is violent; prior burglary convictions count more heavily when the current offense is a burglary; prior drug offenses count more heavily when the current offense is a drug offense; and prior violent felony traffic offenses count more heavily when the current offense is a felony traffic offense. The Legislature has subsequently provided for counting sex offenses more heavily when the current offense is a sex offense. Subsection 5(b) refers to prior convictions "served concurrently." The

meaning of this term was addressed in *State v. Hartley*, 41 Wn. App. 669 (1985).

*Anticipatory Offenses:* A prior conviction for an anticipatory crime (attempt, solicitation, conspiracy) counts as two points if the completed crime constitutes a “violent offense.” *State v. Becker*, 59 Wn. App. 848(1990). In 1999, The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (“VUCSA”) fall under RCW 9A.28.030 and are not “drug offenses” under RCW 69.50. Solicitations to commit VUCSA offenses are not to be counted as three points in the offender score, and community placement is also not required for such offenses. See *In re Hopkins*, 137 Wn.2d 897 (1999).

*Juvenile Criminal History:* Since the legislation required that certain prior juvenile felony adjudications be included as part of criminal history, the Commission needed to establish the relative weight of these felonies in comparison to adult prior felonies. The Commission decided that prior violent felony convictions, whether committed by an adult or a juvenile, should receive the same number of points if the instant offense was violent. The Commission believed that a distinction was necessary between nonviolent adult felonies and nonviolent juvenile felonies because nonviolent juvenile felonies often represent less serious conduct.

In addition, under the definition of juvenile criminal history in RCW 9A.030, the legislation originally specified that prior juvenile convictions are not considered after the offender reaches age 23; the Commission therefore wanted to avoid a significant disparity between the potential Offender Score for someone at age 22 and someone at age 23. Thus, the decision was to count juvenile nonviolent felony adjudications at one-half point (rounding down to the nearest whole number). In 1986 and 1997, the Legislature expanded the definition of criminal history to include all juvenile felony adjudications.

In 1999, the Court of Appeals, Division I, ruled that pre-1997 plea agreements, providing that certain juvenile offenses would not be counted in criminal history, do not insulate current offenders from changes in the law and cannot be relied upon when an offender is sentenced for a subsequent conviction for an offense committed after the effective date of the change in 1997. See *State v. McRae*, 96 Wn. App. 298 (1999).

*"Wash Out" of Priors:* The Commission decided that adult Class A felonies should always be considered as part of the Offender Score. The Commission decided that prior Class B and C felonies should eventually “wash out” and be eliminated from the Offender Score. The 1995 Legislature amended the “wash-out” rule to preclude “wash-out” based on misdemeanor as well as felony convictions. In *State v. Watkins*, 86 Wn. App. 852 (1997), the court held that the 1995 amendment applies to all prior felony convictions, regardless of whether the conviction was previously washed out.

*Out-of-state Convictions:* In calculating the Offender Score, out-of-state convictions must be compared to Washington law.

The question of whether a foreign conviction constituted a felony was discussed in *State v. Southerland*, 43 Wn. App. 246 (1986).

*The 1986 Amendments:*

The 1986 amendments made several changes to this section:

- ?? Added a definition of "prior conviction" and a definition of "other current offenses" in subsection (1);
- ?? Provided that Class A juvenile convictions always count in the criminal history score if a juvenile was at least 15 at the time of the offense (previously, juvenile convictions no longer counted after the person was 23 years of age);
- ?? Changed the scoring rules for felony traffic offenses;
- ?? Clarified the fact that anticipatory offenses are to be counted the same as completed offenses for the purpose of scoring current convictions; and
- ?? Allowed post-1986 prior adult convictions which were served concurrently to be counted separately.

#### The 1987 Amendments:

*The 1987 amendments changed the scoring rules for First and Second Degree Escape. All prior felony convictions count in the criminal history score instead of only prior escapes counting. However, only prior escape convictions count against Willful Failure to Return from Furlough and Willful Failure to Return from Work Release or Escape from Community Custody.*

#### The 1988 Amendments:

*The Commission recommended some changes to this section to clarify ambiguities and correct previous drafting errors. The rule on scoring for serious violent offenses (RCW 9.94A.360(10)) as amended to include Homicide by Abuse. The 1987 Legislature defined this crime as a serious violent offense, but neglected to reference it in the rules on offender scoring.*

*The scoring rules for felony traffic offenses were amended to clarify that prior Vehicular Assaults also receive two points. This scoring procedure was previously reflected in the Offender Score Matrix, but the narrative was not accurate. Because of drafting errors caused by having the scoring rules in two sections, the Commission recommended the Offender Score Matrix (RCW 9.94A.330) be repealed, which it was in 1988.*

*The 1988 Legislature added a point to the offender score if the current offense was committed while the offender was on community placement.*

### The 1990 Amendments:

*Several scoring rules were changed by the 1990 Legislature. These changes are effective for crimes committed after June 30, 1990, and include:*

- ?? Adult and juvenile prior sex offenses are always included in the offender score; they do not wash out.*
- ?? Juvenile sex offenses are counted regardless of the age of the offender at the time of commission of the juvenile offense or the current offense.*
- ?? Juvenile prior convictions for violent offenses that are sentenced on the same day now count as separate crimes in cases involving separate victims.*
- ?? Residential Burglary was included with First and Second Degree Burglary in the offender scoring rules. The 1989 Legislature neglected to amend this section in the bill creating the crime of Residential Burglary.*
- ?? Prior and other current sex offenses count three points when the current conviction is a sex offense.*

### The 1995 Amendments:

*The 1995 Legislature required that juvenile convictions for serious violent offenses (as defined in RCW 9.94A.030(29)) always be counted in the offender score, regardless of the offender's age at the time of the offense. The Legislature also prohibited "wash out" of a prior conviction if, within the prescribed time period, an offender commits a crime for which he or she is subsequently convicted. Thus the qualifying period is measured not from release until a subsequent conviction, but from release until a subsequent offense. Intervening misdemeanors and gross misdemeanors, as well as felonies, appear to preclude "wash out." The legislation also amended (3) to classify federal convictions according to comparable Washington definitions and sentences, and to classify federal felony convictions as class C felonies, for purposes of calculating the offender score, when there is no clearly comparable Washington offense. In addition, (6) was amended to permit a sentencing court to presume that certain prior offenses did not encompass the same criminal conduct for scoring purposes. The term "served concurrently" in (6) was defined by adding (6)(b).*

### The 1997 Amendments:

*The 1997 Legislature required that all prior juvenile felonies be counted as criminal history if they were sentenced consecutively, unless the court determines that they constituted the "same criminal conduct" as defined in RCW 9.94A.400. The Legislature did not change the fractional point values assigned to certain juvenile offenses.*

### The 1999 Amendments:

*The 1999 Legislature amended RCW 9.94A.360 to ensure that all "serious violent" offenses are "triples scored" as criminal history when the current offense is another "serious violent" offense, including Manslaughter 1, which was added to the list of "serious violent" offenses in 1997.*

*The 1999 Legislature also clarified that, although prior DUI-related convictions may not be considered in history when the current offenses is Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or Any Drug (because a two-year enhancement results from each prior DUI-related offense in such cases), other prior non-DUI-related serious traffic*

*offenses should be included in the offender score when the current offense is Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or Any Drug.*

**RCW 9.94A.360 Offender score. (Effective July 1, 2001.)** *The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:*

*The offender score is the sum of points accrued under this section rounded down to the nearest whole number.*

*(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.*

*(2) Class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction. This subsection applies to both adult and juvenile prior convictions.*

*(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.*

*(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.*

*(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:*

*(i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;*

*(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986,*

*for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.*

*(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.*

*(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.*

*(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.*

*(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.*

*(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.*

*(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.*

*(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction.*

*(12) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.*

*(13) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, Willful Failure to Return from Work Release, RCW 72.65.070, or Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.*

*(14) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.*

*(15) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.*

*(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex*

*offense conviction.*

*(17) If the present conviction is for an offense committed while the offender was under community placement, add one point. [2000 c 28 § 15. Prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.370 Presumptive sentence. (Effective until July 1, 2001.)** (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in RCW 9.94A.390(2) (d), (e), (g), and (h). [1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8.]

**Comment**

*The Commission believed that defendants should be sentenced on the basis of facts which are acknowledged, proven, or pleaded to. Concerns were raised about facts which were not proven as an element of the conviction or the plea being used as a basis for sentence decisions, including decisions to depart from the sentence range. As a result, the "real facts policy" was adopted. Amendments in 1986 clarified that facts proven in a trial can be used by a court in determining a sentence.*

*If the defendant disputes information in the presentence investigation, it is anticipated that an evidentiary hearing will be held to resolve the issue.*

**RCW 9.94A.370 Standard sentence range. (Effective July 1, 2001.)** (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence

*reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or when specifically provided for in RCW 9.94A.390(2) (d), (e), (g), and (h). [2000 c 28 § 12; 1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8.]*

**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.380 Alternatives to total confinement.** Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

- (1) One day of partial confinement may be substituted for one day of total confinement;
- (2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community service may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community service hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and
- (3) For offenders convicted of nonviolent and nonsex offenses, the court may authorize county jails to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.129.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used. [1999 c 197 § 6. Prior: 1988 c 157 § 4; 1988 c 155 § 3; 1984 c 209 § 21; 1983 c 115 § 9.]

*Comment*

*One of the legislative directions to the Commission was to "emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender" (RCW 9.94A.040). In fulfilling this directive, the Commission believed it was necessary to develop a flexible policy, but one that also ensures some standardization in its application. The Commission decided that by having the court set the sentence in terms of total confinement (i.e., jail time), proportionality among like offenders would be maintained. The court then has the discretion to apply alternative conversions as a substitute for total confinement for offenders with sentences less than a year. One day of partial confinement (typically work release) or eight hours of community service may replace one day of total confinement. The community service hours, however, are limited to 240 hours (30 days) and thus may only be a partial equivalent for any sentence over 30 days.*

*A converted sentence may include an equivalent combination of jail time, work release, and community service hours. As an example, a sentence of total confinement for nine months may be converted to five months of jail, three months of partial confinement, and one month of community service.*

*In 1988, the Commission recommended this subsection be rewritten to clarify that conversions to community service hours are not available for offenders convicted of violent offenses. The court*



*is directed to indicate its reasons in writing for not using alternatives to confinement for eligible offenders.*

*The 1999 Legislature permitted courts to authorize county jails to convert jail confinement to an available county-supervised option for any non-violent, non-sex offender whom the courts finds has a chemical dependency that contributed to the offense. Courts are permitted to require such offenders to perform affirmative conduct and/or to participate in rehabilitative programs.*

**RCW 9.94A.383 Community custody.** *(Effective until July 1, 2001.)* On all sentences of confinement for one year or less, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and (c). An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll. [1999 c 196 § 10; 1988 c 143 § 23; 1984 c 209 § 22.]

*Comment*

*The 1999 Legislature, enacting the Offender Accountability Act, substituted the term community custody” for “community supervision,” and clarified that offenders being supervised in the community as part of a jail sentence are subject to conditions and sanctions authorized under RCW 9.94A.120(11)(b) and (c) for community custody (for offenses committed on or after July 1, 2000).*

**RCW 9.94A.383 Community custody.** *(Effective July 1, 2001.)* On all sentences of confinement for one year or less, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll. [2000 c 28 § 13; 1999 c 196 § 10; 1988 c 143 § 23; 1984 c 209 § 22.]

**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.386 Fines.** On all sentences under this chapter the court may impose fines according to the following ranges:

|                  |              |
|------------------|--------------|
| Class A felonies | \$0 - 50,000 |
| Class B felonies | \$0 - 20,000 |
| Class C felonies | \$0 - 10,000 |

[1984 c 209 § 23.]

**RCW 9.94A.390 Departures from the guidelines.** *(Effective until July 1, 2001.)* If the sentencing court finds that an exceptional sentence outside the standard range should be imposed in accordance with RCW 9.94A.120(2), the sentence is subject to review only as provided for in RCW

9.94A.210(4).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law, was significantly impaired (voluntary use of drugs or alcohol is excluded).

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other

parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020 and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(j) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter as expressed in RCW 9.94A.010.

(k) The offense resulted in the pregnancy of a child victim of rape.

(l) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization. [1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10.]

### Comment

*Standard sentence ranges represent the appropriate sanction for the "typical" case. The judge will consider individual factors when setting the determinate sentence within the standard sentence range. Some cases, however, are exceptional and require departure from the standard sentence range.*

*Although it was recognized that not all exceptional fact patterns can be anticipated, the Commission determined that a carefully considered nonexclusive list of appropriate justifications for departures from the standard range would be helpful to both the trial and appellate courts. This list is intended as a frame of reference for the court to use in identifying the exceptional case. The list includes examples of mitigating and aggravating factors. As the state has gained more experience with this new sentencing system, additional factors have been added to this list.*

*One illustrative mitigating factor concerns operation of the multiple offense policy. The Commission was particularly concerned about multiple offenses committed in separate jurisdictions where separate sentencing hearings would occur, thus resulting in a higher presumptive sentence than if the crimes were committed in a single jurisdiction and there was*

*only one hearing. In that instance, if the multiple offense policy results in such comparatively high presumptive sentences, the judge might want to consider departing from the standard sentence range in order to impose a less severe sentence, depending, of course, on the particular set of case facts. There was also concern that the multiple offense policy might sometimes result in a presumptive sentence that is clearly too lenient in light of the purposes of this chapter.*

*The 1986 amendments provided better enumeration of the aggravating and mitigating factors. In addition, the reference to firearm possession in major VUCSA offenses was removed. The Commission decided that when firearm use was charged, it should be used to set a sentence within the standard range or as part of a sentence enhancement under RCW9.94A.310; if firearm use is not charged, it can influence the sentence only upon the stipulation of both parties under RCW9.94A.370. The other 1986 amendment added the adjective "current" to subsection (2) to make it clear that aggravating factors only apply to the circumstances surrounding the charged offense.*

*The 1990 Legislature added a finding of sexual motivation as an aggravating factor. The 1995 Legislature authorized an exceptional sentence above the standard range when a defendant's prior unscored misdemeanor or foreign criminal history results in a presumptive sentence that is clearly too lenient.*

*The 1996 Legislature added two new statutory aggravating factors: (1) that the offense was violent and the defendant knew the victim was pregnant, and (2) that the offense involved domestic violence and additional circumstances as defined.*

*The 1997 Legislature authorized an exceptional sentence above the range in cases where a rape resulted in the pregnancy of a child victim.*

*The 1999 Legislature added a new aggravating factor: the defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.*

*The Supreme Court reaffirmed in 1999 that an aggravating factor of "future dangerousness" may not be used as a justification to impose an exceptional sentence, unless the offense is a sex offense. See State v. Halgren, 137 Wn.2d 340 (1999).*

**RCW 9.94A.390 Departures from the guidelines. (Effective July 1, 2001.)** *The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.*

*If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.210(4).*

*A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.210 (2) through (6).*

*The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.*

*(1) Mitigating Circumstances*

*(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.*

*(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.*

*(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.*

*(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.*

*(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.*

*(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.*

*(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.*

*(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.*

*(2) Aggravating Circumstances*

*(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.*

*(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.*

*(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.*

*(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:*

*(i) The current offense involved multiple victims or multiple incidents per victim;*

*(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;*

*(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or*

*(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.*

*(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:*

*(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;*

*(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;*

*(iii) The current offense involved the manufacture of controlled substances for use by other parties;*

(iv) *The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;*

(v) *The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or*

(vi) *The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).*

(f) *The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.*

(g) *The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.*

(h) *The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:*

(i) *The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;*

(ii) *The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or*

(iii) *The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.*

(i) *The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.*

(j) *The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.*

(k) *The offense resulted in the pregnancy of a child victim of rape.*

(l) *The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization. [2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10.]*

#### **NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.392 Findings and intent--1994 c 1.** (1) The people of the state of Washington find and declare that:

(a) Community protection from persistent offenders is a priority for any civilized society.

(b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.

(c) Punishments for criminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.

(d) The public has the right and the responsibility to determine when to impose a life sentence.

(2) By sentencing three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:

(a) Improve public safety by placing the most dangerous criminals in prison.

(b) Reduce the number of serious, repeat offenders by tougher sentencing.

(c) Set proper and simplified sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process. [1994 c 1 § 1 (Initiative Measure No. 593, approved November 2, 1993).]

*Comment*

*Initiative Measure No. 593 included this statement of findings and intent.*

**RCW 9.94A.393 Offender notification and warning.** A sentencing judge, law enforcement agency, or state or local correctional facility may, but is not required to, give offenders who have been convicted of an offense that is a most serious offense as defined in RCW 9.94A.030 either written or oral notice, or both, of the sanctions imposed upon persistent offenders. General notice of these sanctions and the conditions under which they may be imposed may, but need not, be given in correctional facilities maintained by state or local agencies. This section is enacted to provide authority, but not requirement, for the giving of such notice in every conceivable way without incurring liability to offenders or third parties. [1994 c 1 § 4 (Initiative Measure No. 593, approved November 2, 1993).]

**RCW 9.94A.394 Governor's powers.** (1) Nothing in chapter 1, Laws of 1994 shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by-case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scrutiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender. [1994 c 1 § 5 (Initiative Measure No. 593, approved November 2, 1993).]

**RCW 9.94A.395 Abused victim--Resentencing for murder of abuser. (*Effective until July 1, 2001.*)** (1) The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing defendants convicted of murder if the indeterminate sentence review board advises the court of the following:

(a) The defendant was convicted for a murder committed prior to the \*effective date of RCW 9.94A.390(1)(h);

(b) RCW 9.94A.390(1)(h), if \*effective when the defendant committed the crime, would have provided a basis for the defendant to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the defendant for the murder, did not consider evidence that the victim subjected the defendant or the defendant's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the defendant in light of RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the defendant committed the

crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed. [1993 c 144 § 5.]

#### Comment

*In 1993, the Legislature enacted RCW 9.94A.395 to establish a procedure for reducing the sentences of certain offenders convicted of murder prior to the effective date of RCW 9.94A.390(1)(h) (July 23, 1989).*

**RCW 9.94A.395 Abused victim--Resentencing for murder of abuser. (Effective July 1, 2001.)** (1) *The sentencing court or the court's successor shall consider recommendations from the indeterminate sentence review board for resentencing offenders convicted of murder if the indeterminate sentence review board advises the court of the following:*

*(a) The offender was convicted for a murder committed prior to July 23, 1989;*

*(b) RCW 9.94A.390(1)(h), if effective when the offender committed the crime, would have provided a basis for the offender to seek a mitigated sentence; and*

*(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the offender for the murder, did not consider evidence that the victim subjected the offender or the offender's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.*

*(2) The court may resentence the offender in light of RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the offender committed the crime in response to abuse.*

*(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed. [2000 c 28 § 42; 1993 c 144 § 5.]*

#### **RCW 9.94A.400 Consecutive or concurrent sentences. (Effective until July 1, 2001.)**

(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)(g) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of



zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence of felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.120(2), if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months. [1999 c 352 § 11; 1998 c 235 § 2; 1996 c 199 § 3; 1995 c 167 § 2; 1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11.]

### Comment

*Under the SRA, a sentencing judge must impose concurrent sentences. There are two exceptions to this policy: (1) under subsection (b), a person convicted of two or more serious violent offenses arising from separate and distinct criminal conduct must be sentenced consecutively (the criminal history score is calculated differently than in subsection (a)); and (2) under subsection (3), the sentencing judge may expressly order that the sentence be served consecutively to sentences already imposed in other jurisdictions. This comment was addressed by State v. Moore, 63 Wn. App. 466 (1991).*

*Unless the offenses fall under the exceptions listed in subsection (1) (b) or subsection (3), consecutive sentences imposed for current offenses constitute exceptional sentences and must comply with the exceptional sentence provisions of the Act. See RCW 9.94A.120(18).*

*The 1986 amendment to subsection (3) changed this section so sentences for all current offenses*

*run concurrently with the sentences for all other current offenses from any other state or federal court, unless the sentencing court expressly orders the sentences to be consecutive. Previously, the presumption was that such sentences would be consecutive unless the sentencing court expressly ordered otherwise. This subsection is now consistent with pre-SRA law.*

*Subsections (2) and (3) cover situations where, at the time the defendant is sentenced on a present conviction, he or she has not yet completed a sentence for another felony conviction. The difference between the two subsections is the phrase "under sentence of a felony." Under (2), if at the time the present crime is committed, the defendant has not completed confinement for another sentence, the confinement for the present sentence does not begin until expiration of his or her prior sentence. These sentences are to be run consecutively, and an exceptional sentence is necessary to impose concurrent sentences. Under (3), if the latter crime was committed at a point before the offender was sentenced for the previous crime, the presumption is toward a concurrent sentence but the court can decide to order a consecutive sentence.*

*Subsection (3) will often be relevant where the defendant has been charged in multiple informations or has committed a series of crimes across court jurisdictions (crimes in more than one county, more than one state, or crimes for which he or she has been sentenced under both state and federal jurisdictions) and where the defendant will be sentenced by more than one judge. The*

*purpose of this subsection is to allow the judge some flexibility within the guidelines in order to minimize the incidental factors of geographical boundaries and jurisdictions.*

*Subsection (4) covers the situation in which a court is imposing a prison sentence for a crime committed prior to July 1, 1984, where the defendant previously received a deferred or suspended sentence and now is having that probation revoked. The sentence for the revocation runs consecutively to any sentence imposed under the new presumptive scheme unless the court expressly orders a concurrent sentence.*

*Subsection (5) points out that the defendant must serve all terms of total confinement on consecutive sentences before other conditions are performed. As stated earlier, the multiple offense policy was among the most complex issues confronted by the Commission and the Legislature. The Legislature acknowledged in RCW 9.94A.390 (aggravating and mitigating factors) that the operation of the multiple offense policy might, in individual cases, result in a "clearly excessive" or "clearly too lenient" presumptive sentence, and therefore, departures from the range may be appropriate.*

*This section does not apply to First-time Offenders sentenced under RCW 9.94A.120(5).*

*In 1988, the Commission recommended RCW 9.94A.400(1)(b) be clarified to substitute the phrase "prior convictions and other current convictions that are not serious violent offenses" for the term "criminal history." In the Commission's review of sentences it was discovered that offenders convicted of multiple serious violent offenses with additional convictions for offenses that were not serious violent offenses (for example, a burglary), the lesser offenses were frequently not calculated into the offender score. The Commission decided the problem was the use of the term "criminal history" because it appeared to only include prior offenses, not additional current offenses. Thus, the new phrase was recommended.*

*The 1990 Legislature changed the rules regarding consecutive sentencing for multiple serious violent offenses. The consecutive sentencing requirement now applies to two or more serious violent offenses instead of three.*

*The 1995 Legislature added (2)(b), for cases where an offender under community supervision is sentenced to additional conditions of community supervision for a subsequent offense.*

*The 1996 Legislature required that Vehicular Assault and Vehicular Homicide be treated as different criminal conduct even if the victims occupied the same vehicle, and repealed language authorizing the court to consider multiple victims in such cases as an aggravating circumstance justifying an exceptional sentence.*

*The enactment of Initiative Measure No. 159 by the 1995 Legislature amended RCW 9.41.010 to require "notwithstanding any other law," that an offender convicted under RCW 9.41.010 for Unlawful Possession of a Firearm 1 or 2, and for Theft of a Firearm and/or Possession of a Stolen Firearm, serve consecutive sentences for each of those offenses. The 1998 Legislature subsequently clarified that sentences for Unlawful Possession of a Firearm in the First or Second Degree and for Theft of a Firearm or Possession of a Stolen Firearm or both, must be served consecutively for each current conviction of the felony crimes listed and for each firearm unlawfully possessed.*

*In State v. Roose, 90 Wn. App 513(1998), the Court of Appeals ruled that a court is not precluded from counting multiple counts of the offense of firearm theft as a single offense for sentencing purposes under RCW 9.94A.400(1)(a), if the court enters a finding that those current offenses encompass the same criminal conduct.*

*The 1999 Legislature clarified RCW 9.94A.400(c) to permit all current offenses, other than current weapon-related offenses, to be considered as prior offenses when calculating an offender's criminal history score to determine a sentence for Unlawful Possession of a Firearm 1 or 2 and Theft of a Firearm or Possession of a Stolen Firearm, or both.*

**RCW 9.94A.400 Consecutive or concurrent sentences. (Effective July 1, 2001.)** (1)(a) *Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.*

*(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by*

using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.390, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months. [2000 c 28 § 14; 1999 c 352 § 11; 1998 c 235 § 2; 1996 c 199 § 3; 1995 c 167 § 2; 1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11.]

#### **NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.410 Anticipatory offenses. (Effective until July 1, 2001.)** For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent.

In calculating an offender score, count each prior conviction as if the present conviction were for the completed offense. When these convictions are used as criminal history, score them the same as a completed crime. [1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12.]

**RCW 9.94A.410 Anticipatory offenses.** *(Effective July 1, 2001.) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent. [2000 c 28 § 16; 1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12.]*

**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.420 Presumptive ranges that exceed the statutory maximum.** If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. [1998 c 235 § 3; 1983 c 115 § 13.]

*Comment*

*The 1998 Legislature clarified that if a firearm or deadly weapon enhancement increases a sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the weapon enhancement may not be reduced. As a result, in such a case the underlying sentence must be reduced so that the total confinement time does not exceed the statutory maximum.*

**RECOMMENDED PROSECUTING STANDARDS  
FOR CHARGING AND PLEA DISPOSITIONS**

**RCW 9.94A.430 Introduction.** These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state. [1983 c 115 § 14.]

*Comment*

*These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.*

**RCW 9.94A.440 Evidentiary sufficiency.** *(Effective until July 1, 2001.)* (1) Decision not to prosecute.

**STANDARD:** A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the

law.

#### GUIDELINE/COMMENTARY:

##### Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimus Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

- (i) Conviction of the new offense would not merit any additional direct or collateral punishment;
- (ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated;

and

- (iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

- (i) Conviction of the new offense would not merit any additional direct or collateral punishment;
- (ii) Conviction in the pending prosecution is imminent;
- (iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated;

and

- (iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

- (i) Assault cases where the victim has suffered little or no injury;
- (ii) Crimes against property, not involving violence, where no major loss was suffered;
- (iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

#### Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid prefilings agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9A.120(8).

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

### CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

#### CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Kidnaping

1st Degree Assault

1st Degree Assault of a Child

1st Degree Rape

1st Degree Robbery

1st Degree Rape of a Child

1st Degree Arson

2nd Degree Kidnaping

2nd Degree Assault

2nd Degree Assault of a Child

2nd Degree Rape

2nd Degree Robbery

1st Degree Burglary

1st Degree Manslaughter

2nd Degree Manslaughter

1st Degree Extortion

Indecent Liberties

Incest

2nd Degree Rape of a Child

Vehicular Homicide

Vehicular Assault

3rd Degree Rape

3rd Degree Rape of a Child

1st Degree Child Molestation

2nd Degree Child Molestation

3rd Degree Child Molestation  
2nd Degree Extortion  
1st Degree Promoting Prostitution  
Intimidating a Juror  
Communication with a Minor  
Intimidating a Witness  
Intimidating a Public Servant  
Bomb Threat (if against person)  
3rd Degree Assault  
3rd Degree Assault of a Child  
Unlawful Imprisonment  
Promoting a Suicide Attempt  
Riot (if against person)  
Stalking  
Custodial Assault  
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)  
Counterfeiting (if a violation of RCW 9.16.035(4))

#### CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson  
1st Degree Escape  
2nd Degree Burglary  
1st Degree Theft  
1st Degree Perjury  
1st Degree Introducing Contraband  
1st Degree Possession of Stolen Property  
Bribery  
Bribing a Witness  
Bribe received by a Witness  
Bomb Threat (if against property)  
1st Degree Malicious Mischief  
2nd Degree Theft  
2nd Degree Escape  
2nd Degree Introducing Contraband  
2nd Degree Possession of Stolen Property  
2nd Degree Malicious Mischief  
1st Degree Reckless Burning  
Taking a Motor Vehicle without Authorization  
Forgery  
2nd Degree Perjury  
2nd Degree Promoting Prostitution  
Tampering with a Witness  
Trading in Public Office  
Trading in Special Influence  
Receiving/Granting Unlawful Compensation  
Bigamy  
Eluding a Pursuing Police Vehicle  
Willful Failure to Return from Furlough



Escape from Community Custody  
Riot (if against property)  
Thefts of Livestock

## ALL OTHER UNCLASSIFIED FELONIES

### Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

- (A) Will significantly enhance the strength of the state's case at trial; or
- (B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

- (A) Charging a higher degree;
- (B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

### (b) GUIDELINES/COMMENTARY:

#### (i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

#### (ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner.

If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

#### (iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

#### (iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

#### (v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of

charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions. [2000 c 119 § 28. Prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15.]

**Comment**

*Decision Not to Prosecute:* This standard and the examples previously listed were taken in large measure from the 1980 Washington Association of Prosecuting Attorneys' Standards for Charging and Plea Bargaining.

*The 1995 Legislature added a guideline calling for prosecutors to consult with victims or their representatives about the selection or disposition of charges, and to consider those discussions before reaching any agreement with a defendant about charging or disposition.*

*The 1999 Legislature added the following offenses to the list of "Crimes Against Persons:" Custodial Assault (RCW 9A.36.100); Stalking (RCW 9A.46.110); No-Contact Order Violation: Domestic Violence Pre-Trial Condition (RCW 10.99.040(4)(b) and (c)); No-Contact Order Violation: Domestic Violence Sentence Condition (RCW 10.99.050(2)); Protection Order Violation: Domestic Violence Civil Action (RCW 26.50.110(4) and (5)); and Counterfeiting While Endangering Public Health and Safety (RCW 9.16.035(4)).*

**RCW 9.94A.440 Evidentiary sufficiency. (Effective July 1, 2001.)** (1) Decision not to prosecute.

**STANDARD:** A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

**GUIDELINE/COMMENTARY:**

*Examples*

*The following are examples of reasons not to prosecute which could satisfy the standard.*

(a) *Contrary to Legislative Intent* - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) *Antiquated Statute* - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) *It has not been enforced for many years; and*
- (ii) *Most members of society act as if it were no longer in existence; and*
- (iii) *It serves no deterrent or protective purpose in today's society; and*
- (iv) *The statute has not been recently reconsidered by the legislature.*

*This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.*

(c) *De Minimus Violation* - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) *Confinement on Other Charges* - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) *Conviction of the new offense would not merit any additional direct or collateral punishment;*

(ii) *The new offense is either a misdemeanor or a felony which is not particularly aggravated; and*

(iii) *Conviction of the new offense would not serve any significant deterrent purpose.*

(e) *Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and*

(i) *Conviction of the new offense would not merit any additional direct or collateral punishment;*

(ii) *Conviction in the pending prosecution is imminent;*

(iii) *The new offense is either a misdemeanor or a felony which is not particularly aggravated; and*

(iv) *Conviction of the new offense would not serve any significant deterrent purpose.*

(f) *High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.*

(g) *Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.*

(h) *Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.*

(i) *Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:*

(i) *Assault cases where the victim has suffered little or no injury;*

(ii) *Crimes against property, not involving violence, where no major loss was suffered;*

(iii) *Where doing so would not jeopardize the safety of society.*

*Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.*

*The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.*

#### *Notification*

*The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.*

(2) *Decision to prosecute.*

(a) *STANDARD:*

*Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.*

*Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.*

*See table below for the crimes within these categories.*

## *CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS*

### *CRIMES AGAINST PERSONS*

*Aggravated Murder*

*1st Degree Murder*

*2nd Degree Murder*

*1st Degree Manslaughter*

*2nd Degree Manslaughter*

*1st Degree Kidnapping*

*2nd Degree Kidnapping*

*1st Degree Assault*

*2nd Degree Assault*

*3rd Degree Assault*

*1st Degree Assault of a Child*

*2nd Degree Assault of a Child*

*3rd Degree Assault of a Child*

*1st Degree Rape*

*2nd Degree Rape*

*3rd Degree Rape*

*1st Degree Rape of a Child*

*2nd Degree Rape of a Child*

*3rd Degree Rape of a Child*

*1st Degree Robbery*

*2nd Degree Robbery*

*1st Degree Arson*

*1st Degree Burglary*

*1st Degree Extortion*

*2nd Degree Extortion*

*Indecent Liberties*

*Incest*

*Vehicular Homicide*

*Vehicular Assault*

*1st Degree Child Molestation*

*2nd Degree Child Molestation*

*3rd Degree Child Molestation*

*1st Degree Promoting Prostitution*

*Intimidating a Juror*

*Communication with a Minor*

*Intimidating a Witness*

*Intimidating a Public Servant*

*Bomb Threat (if against person)*

*Unlawful Imprisonment*

*Promoting a Suicide Attempt*

*Riot (if against person)*

*Stalking*

*Custodial Assault*

*Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)*

*Counterfeiting (if a violation of RCW 9.16.035(4))*

## *CRIMES AGAINST PROPERTY/OTHER CRIMES*

*2nd Degree Arson*  
*1st Degree Escape*  
*2nd Degree Escape*  
*2nd Degree Burglary*  
*1st Degree Theft*  
*2nd Degree Theft*  
*1st Degree Perjury*  
*2nd Degree Perjury*  
*1st Degree Introducing Contraband*  
*2nd Degree Introducing Contraband*  
*1st Degree Possession of Stolen Property*  
*2nd Degree Possession of Stolen Property*  
*Bribery*  
*Bribing a Witness*  
*Bribe received by a Witness*  
*Bomb Threat (if against property)*  
*1st Degree Malicious Mischief*  
*2nd Degree Malicious Mischief*  
*1st Degree Reckless Burning*  
*Taking a Motor Vehicle without Authorization*  
*Forgery*  
*2nd Degree Promoting Prostitution*  
*Tampering with a Witness*  
*Trading in Public Office*  
*Trading in Special Influence*  
*Receiving/Granting Unlawful Compensation*  
*Bigamy*  
*Eluding a Pursuing Police Vehicle*  
*Willful Failure to Return from Furlough*  
*Escape from Community Custody*  
*Riot (if against property)*  
*1st Degree Theft of Livestock*  
*2nd Degree Theft of Livestock*

## *ALL OTHER UNCLASSIFIED FELONIES*

### *Selection of Charges/Degree of Charge*

*(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:*

- (A) Will significantly enhance the strength of the state's case at trial; or*
- (B) Will result in restitution to all victims.*

*(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:*

- (A) Charging a higher degree;*
- (B) Charging additional counts.*

*This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.*

*(b) GUIDELINES/COMMENTARY:*

*(i) Police Investigation*

*A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:*

*(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;*

*(B) The completion of necessary laboratory tests; and*

*(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.*

*If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.*

*(ii) Exceptions*

*In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:*

*(A) Probable cause exists to believe the suspect is guilty; and*

*(B) The suspect presents a danger to the community or is likely to flee if not apprehended;*

*or*

*(C) The arrest of the suspect is necessary to complete the investigation of the crime.*

*In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.*

*(iii) Investigation Techniques*

*The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:*

*(A) Polygraph testing;*

*(B) Hypnosis;*

*(C) Electronic surveillance;*

*(D) Use of informants.*

*(iv) Pre-Filing Discussions with Defendant*

*Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.*

*(v) Pre-Filing Discussions with Victim(s)*

*Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions. [2000 c 119 § 28; 2000 c 28 § 17. Prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15.]*

**NOTES:**

**Reviser's note:** *This section was amended by 2000 c 28 § 17 and by 2000 c 119 § 28, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).*

**RCW 9.94A.450 Plea dispositions.** STANDARD: (1) Except as provided in subsection (2) of this section, a defendant will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(2) In certain circumstances, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

- (a) Evidentiary problems which make conviction on the original charges doubtful;
- (b) The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;
- (c) A request by the victim when it is not the result of pressure from the defendant;
- (d) The discovery of facts which mitigate the seriousness of the defendant's conduct;
- (e) The correction of errors in the initial charging decision;
- (f) The defendant's history with respect to criminal activity;
- (g) The nature and seriousness of the offense or offenses charged;
- (h) The probable effect on witnesses. [1983 c 115 § 16.]

**RCW 9.94A.460 Sentence recommendations.** STANDARD:

The prosecutor may reach an agreement regarding sentence recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement. [1983 c 115 § 17.]

**RCW 9.94A.470 Armed offenders.** Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.440(2), any and all felony crimes involving any deadly weapon special verdict under RCW 9.94A.125, any deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.310 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.440(2) as crimes against persons. [1995 c 129 § 4 (Initiative Measure No. 159).]

**RCW 9.94A.560 Persistent offenders.** *(Effective July 1, 2001.) Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.150 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) In the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree. [2000 c 28 § 6.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.



**RCW 9.94A.590 Mandatory minimum terms.** (Effective July 1, 2001.) (1) The following minimum terms of total confinement are mandatory and shall not be varied or modified under RCW 9.94A.390:

(a) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years.

(b) An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years.

(c) An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years.

(2) During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.150, or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (a) In the case of an offender in need of emergency medical treatment; (b) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree; or (c) for an extraordinary medical placement when authorized under RCW 9.94A.150(4). [2000 c 28 § 7.]

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.650 First-time offender waiver.** (Effective July 1, 2001.) (1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2); or

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include a term of community supervision or community custody as specified in subsection (3) of this section, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;

(b) Undergo available outpatient treatment for up to the period specified in subsection (3) of this section, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

(d) Remain within prescribed geographical boundaries and notify the community

*corrections officer prior to any change in the offender's address or employment;*

*(e) Report as directed to a community corrections officer; or*

*(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.*

*(3) The terms and statuses applicable to sentences under subsection (2) of this section are:*

*(a) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and*

*(b) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this section is subject to conditions and sanctions as authorized in this section and in RCW 9.94A.715 (2) and (3).*

*(4) The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court. [2000 c 28 § 18.]*

#### **NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.660 Drug offender sentencing alternative. (Effective July 1, 2001.) (1)**  
*An offender is eligible for the special drug offender sentencing alternative if:*

*(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);*

*(b) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;*

*(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and*

*(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order.*

*(2) If the standard sentence range is greater than one year and the sentencing court determines that the offender is eligible for this alternative and that the offender and the community will benefit from the use of the alternative, the judge may waive imposition of a sentence within the standard sentence range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.*

*The court shall also impose:*

*(a) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;*

(b) *Crime-related prohibitions including a condition not to use illegal controlled substances; and*

(c) *A requirement to submit to urinalysis or other testing to monitor that status.*

*The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:*

(i) *Devote time to a specific employment or training;*

(ii) *Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;*

(iii) *Report as directed to a community corrections officer;*

(iv) *Pay all court-ordered legal financial obligations;*

(v) *Perform community service work;*

(vi) *Stay out of areas designated by the sentencing court;*

(vii) *Such other conditions as the court may require such as affirmative conditions.*

(3) *If the offender violates any of the sentence conditions in subsection (2) of this section, a violation hearing shall be held by the department unless waived by the offender. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.*

(4) *The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.*

(5) *An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing court. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned release time. [2000 c 28 § 19.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.670 Special sex offender sentencing alternative. (Effective July 1, 2001.)**

(1) *Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.*

(a) *"Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.*

(b) *"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.*

(2) *An offender is eligible for the special sex offender sentencing alternative if:*

(a) *The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;*

(b) *The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; and*

(c) *The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.*

(3) *If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.*

(a) *The report of the examination shall include at a minimum the following:*

(i) *The offender's version of the facts and the official version of the facts;*

(ii) *The offender's offense history;*

(iii) *An assessment of problems in addition to alleged deviant behaviors;*

(iv) *The offender's social and employment situation; and*

(v) *Other evaluation measures used.*

*The report shall set forth the sources of the examiner's information.*

(b) *The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:*

(i) *Frequency and type of contact between offender and therapist;*

(ii) *Specific issues to be addressed in the treatment and description of planned treatment modalities;*

(iii) *Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;*

(iv) *Anticipated length of treatment; and*

(v) *Recommended crime-related prohibitions.*

(c) *The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.*

(4) *After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence within the standard sentence range. If the sentence imposed is less than [than] eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:*

(a) *The court shall place the offender on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.*

(b) *The court shall order treatment for any period up to three years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.*

(5) *As conditions of the suspended sentence, the court may impose one or more of the following:*

(a) *Up to six months of confinement, not to exceed the sentence range of confinement for that offense;*

(b) *Crime-related prohibitions;*

(c) *Require the offender to devote time to a specific employment or occupation;*

(d) *Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;*

(e) *Report as directed to the court and a community corrections officer;*

(f) *Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;*

(g) *Perform community service work; or*

(h) *Reimburse the victim for the cost of any counseling required as a result of the offender's crime.*

(6) *At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.*

(7) *The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.*

(8) *Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment for up to the remaining period of community custody.*

(9) *If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.*

(10) *The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.*

(11) *Examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW unless the court finds that:*

(a) *The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or*

(b)(i) *No certified providers are available for treatment within a reasonable geographical distance of the offender's home; and*

(ii) *The evaluation and treatment plan comply with this section and the rules adopted by the department of health.*

*(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. [2000 c 28 § 20.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.700 Community placement. (Effective July 1, 2001.)** When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.125 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.150, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community service, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

- (a) The offender shall remain within, or outside of, a specified geographical boundary;
- (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
- (c) The offender shall participate in crime-related treatment or counseling services;
- (d) The offender shall not consume alcohol; or
- (e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive. [2000 c 28 § 22.]

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.705 Community placement for specified offenders.** (Effective July 1, 2001.) Except for persons sentenced under RCW 9.94A.700(2) or 9.94A.710, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. [2000 c 28 § 23.]

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.710 Community custody for sex offenders.** (Effective July 1, 2001.) (1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW 9.94A.700(4) and may include

those provided for in RCW 9.94A.700(5). As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. [2000 c 28 § 24.]

**NOTES:**

*Technical correction bill--2000 c 28: See note following RCW 9.94A.015.*

**RCW 9.94A.715 Community custody for specified offenders. (Effective July 1, 2001.)**

(1) When a court sentences a person to the custody of the department for a sex offense, a violent offense, any crime against persons under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.040 or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.150 (1) and (2).

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.205 and 9.94A.207.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall



*discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.*

*(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.*

*(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.*

*(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community. [2000 c 28 § 25.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.720 Supervision of offenders. (Effective July 1, 2001.)** *(1)(a) All offenders sentenced to terms involving community supervision, community service, community placement, community custody, or legal financial obligation shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.*

*(b) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.*

*(c) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.*

*(d) For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may impose conditions as specified in RCW 9.94A.715.*

*The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to RCW 9.94A.710 occurs during community custody, it*

shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the expiration of the offender's term of community custody as authorized in RCW 9.94A.715 (3) or (5).

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(2) No offender sentenced to terms involving community supervision, community service, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under RCW 9.94A.200, 9.94A.205, and 9.94A.207. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010. [2000 c 28 § 26.]

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.800 Sex offender treatment in correctional facility. (Effective July 1, 2001.)** (1) When an offender commits any felony sex offense on or after July 1, 1987, and on or before July 1, 1990, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (c) Report as directed to the court and a community corrections officer;
- (d) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department.

Nothing in this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987.

(2) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the

*offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds. [2000 c 28 § 34.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.810 Transition and relapse prevention strategies.** *(Effective July 1, 2001.) Within the funds available for this purpose, the department shall develop and monitor transition and relapse prevention strategies, including risk assessment and release plans, to reduce risk to the community after sex offenders' terms of confinement in the custody of the department. [2000 c 28 § 35.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.820 Sex offender treatment in the community.** *(Effective July 1, 2001.) (1) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this chapter shall be conducted only by sex offender treatment providers certified by the department of health under chapter 18.155 RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified provider.*

*(2) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home. [2000 c 28 § 36.]*

**NOTES:**

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.905 Effective date of RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250, 9.94A.260--Sentences apply to felonies committed after June 30, 1984.** *RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, and 9.94A.250 and 9.94A.260 shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984. [1981 c 137 § 28.]*

**RCW 9.94A.910 Severability--1981 c 137.** *If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to*

other persons or circumstances is not affected. [1981 c 137 § 41.]

**RCW 9.94A.920 Headings and captions not law--2000 c 28.** Part headings and section captions used in this act do not constitute any part of the law. [2000 c 28 § 43.]

**RCW 9.94A.921 Effective date--2000 c 28.** Sections 1 through 42 of this act take effect July 1, 2001. [2000 c 28 § 46.]

**RCW 9.94A.922 Severability--2000 c 28.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2000 c 28 § 47.]

## **Digest of Court Cases Interpreting the Sentencing Reform Act**

The following is a digest of 1999 Washington Supreme Court and Court of Appeals cases and selected 2000 cases interpreting the Sentencing Reform Act of 1981 (RCW Chapter 9.94A). This digest only includes cases decided up to July 1, 2000. There is the possibility that some cases decided after July 1, 2000 might have changed or affected in some way the courts' previous interpretations of the Sentencing Reform Act.

This digest was prepared by the Criminal Justice Division of the Attorney General of Washington and not by the Sentencing Guidelines Commission. The Commission does not endorse nor necessarily agree with the interpretations of the court cases set forth in this digest. Any questions or comments regarding this digest should be directed to the Criminal Justice Division of the Attorney General of Washington.

### **Washington Supreme Court**

*In re Henrickson*, Nos. 67520-1, 67793-0, 2000 WL 633336 (May 18, 2000)

Consolidated cases, in which State sought commitment of two sexually violent predators. Both offenders were confined in DOC facilities the day the commitment petitions were filed. The State and one offender petitioned the Court to review the issue of whether proof of a recent overt act was required in order to commit a sexually violent predator. The Supreme Court held that the statutory "recent overt act requirement" applies only to those not confined at the time of the petition's filing, and that periods of temporary release after arrest and prior to extensive confinement do not modify this rule.

The Court also held that at the time a sexually violent predator petition is filed, if an individual is incarcerated for a sexually violent offense, or for an act that would itself qualify as a recent overt act, due process does not require that the State prove that a further overt act occurred between arrest and release from incarceration.

*State v. Barnett*, 139 Wn.2d 462, 987 P.2d 626 (October 28, 1999)

The defendant was found guilty of first-degree burglary while armed with a deadly weapon, and was sentenced to 75 months incarceration and one year of community placement. The State appealed the Court of Appeals' determination that the sanction of community placement was unsupported. The Supreme Court held that former RCW 9.94A.120(9)(a), which permitted the imposition of community placement for "any crime against a person where it is determined ... that the defendant or an accomplice was armed with a deadly weapon at the time of commission," did not permit the trial court to impose community placement in the defendant's case, as the defendant was convicted of armed first degree burglary without injuring or threatening another during the course of his crime.

*In re Personal Restraint Petition of Smith*, 139 Wn.2d 199, 986 P.2d 131 (October 14, 1999)

The petitioners were convicted on multiple counts, at least one of which constituted a serious violent offense. In consolidated personal restraint petitions, the petitioners appealed the application of former RCW 9.94A.150(1) (1996) to their Class B felonies, which capped the defendants' "earned early release time" at 15 percent of their respective sentences. The Supreme Court held that under the language of the statute, this rule applies only to Class A serious violent offenses or Class A sex offenses.

While the above statute was subsequently amended to apply to all violent offenses and Class A sex offenses, the Court ruled that this change did not apply retroactively. Therefore, the Supreme Court held that under former RCW 9.94A.150(1), the petitioners were entitled to earn early release time of up to one-third of their total sentences on their Class B felony convictions.

*State v. Cruz*, 139 Wn.2d 186, 985 P.2d 384 (October 7, 1999)

The defendant was sentenced as a persistent offender to life in prison without the possibility of parole after being found guilty of one count of first degree rape of a child. The defendant appealed, claiming that under the laws in effect at the time his crime was committed, his prior convictions had "washed out," and could not be used in calculating his sentence. The Supreme Court agreed, holding that the 1990 amendment to the washout provisions of the SRA, which changed the rules for the "wash out" of prior convictions, only applied prospectively, rather than retroactively.

*State v. Tili*, 139 Wn.2d 107, 985 P.2d 365 (October 7, 1999)

The defendant was found guilty of one count of second degree assault and three counts of first-degree rape. The defendant appealed, contending that the trial court erred when it concluded that his three counts of rape in the first degree did not constitute the "same criminal conduct" for sentencing purposes under RCW 9.94A.400. The Supreme Court held that while each penetration of a rape victim constitutes an independent unit of prosecution, it only constitutes one offense for sentencing purposes.

*In re Personal Restraint Petition of Ecklund*, 139 Wn.2d 166, 985 P.2d 342 (October 7, 1999)

The petitioner was sentenced to a term of life imprisonment after being found guilty of first degree murder. After a parole hearing, the petitioner filed a personal restraint petition, claiming that the Indeterminate Sentence Review Board (Board) had failed to give appropriate consideration to the SRA when the Board, citing the petitioner's denial of guilt for the offenses of which he was convicted, denied the petitioner parole. The denial of parole effectively extended the petitioner's sentence beyond the standard SRA range. The Supreme Court held that the Board did not abuse its discretion in utilizing the petitioner's denial of guilt as a fact bearing on the question of whether the petitioner had been rehabilitated and presented a threat to the community. The Supreme Court also held that the Board's "practices and criteria need not mirror the SRA practices and criteria for imposing an exceptional sentence."

*State v. Elmore*, 139 Wn.2d 250, 985 P.2d 289 (October 7, 1999)

The defendant was sentenced to death after being found guilty of one count of aggravated first-degree murder and one count of second-degree rape. The defendant appealed, asserting that the SRA washout provisions and/or ER 403 balancing should have been applied to strike his criminal history. The defendant claimed that not applying such provisions to a capital case violated his equal protection rights. The Supreme Court held that failure by the trial court to adopt the "washout" provisions of the SRA and the ER 403 balancing test in capital sentencing cases does not constitute an equal protection violation, affirming *State v. Brett*, 126 Wn.2d at 185 and *State v. Stenson*, 132 Wn.2d at 744-46.

*State v. Brown*, 139 Wn.2d 20, 983 P.2d 608 (September 9, 1999)

The defendant was found guilty of second degree assault while armed with a deadly weapon. The trial court imposed a sentence below the standard range for this offense (The defendant's range with the deadly weapon enhancement was 15-21 months; the trial court imposed a sentence of seven months.) The State appealed the exceptional sentence downward. The Supreme Court held that the Hard Time for Armed Crime initiative deprives a sentencing court of discretion to impose an exceptional sentence downward below the confinement time specified for a mandatory deadly weapon enhancement.

*State v. Thomas*, 138 Wn.2d 630, 980 P.2d 1275 (July 29, 1999)

The defendant was found guilty of felony murder in the first degree and given an exceptional

sentence based on the following aggravating circumstances: the victim's vulnerability due to advanced age, violation of victims zone of privacy, and sexual motivation. The defendant appealed his sentence, contending that felony murder predicated on rape is a "sex offense" as defined by statute and, therefore, "sexual motivation" was an improper aggravating factor upon which to base his exceptional sentence. The Supreme Court held that a felony murder conviction predicated on rape does not constitute a "sex offense" for purposes of RCW 9.94A.127. Therefore, an exceptional sentence based on the aggravating factor of "sexual motivation" was lawful.

## **Washington State Court of Appeals**

*State v. Miniken*, 100 Wn. App. 925, 999 P.2d 1289 (Div. I, May 30, 2000)

The defendant was convicted of two counts of first degree statutory rape. After the defendant had served his prison sentence, completed his community placement, and paid his legal financial obligations, the Department of Corrections requested that a certificate of discharge be issued to the defendant. The State opposed issuing the discharge, arguing that doing so would terminate jurisdiction to enforce a no contact order. The defendant appealed the sentencing court's denial to issue the certificate. The Court of Appeals held that the provisions of the SRA allow a no-contact order to be characterized as a requirement of the sentence. Therefore, to maintain jurisdiction and enforcement capabilities, it is appropriate for a trial court to deny the certificate of discharge until all requirements of the sentence had been completed, including the full duration of the no-contact order.

*State v. Letourneau*, 100 Wn. App. 424, 997 P.2d 436 (Div. I, April 17, 2000)

The defendant pled guilty to two counts of second degree rape. Under the Special Sexual Offender Sentencing Alternative (SSOSA) the defendant was sentenced to 89 months suspended of total confinement, including three years of specialized treatment. The trial court ordered that the defendant have no contact with the victim or with any minors without supervision. The defendant was additionally sentenced to community custody for two years to commence upon completion of the term of confinement with a condition that she not profit, directly or indirectly, as a result of the commission of her crime. Subsequently, the defendant's SSOSA was revoked when the defendant was found in violation of the no contact provision. The defendant was sent to prison to serve out the previously suspended confinement portion of her sentence, and the trial court entered two orders modifying and clarifying the judgement and sentence. The defendant appealed the provision in her sentence barring her from profiting from her crime. The Court of Appeals held that sentencing provisions that are not "crime-related prohibitions" and not otherwise authorized by statute are not enforceable. Therefore, because the prohibition against profiting from any commercialization related to her crimes was not directly related to the second degree rape of a child conviction, and that to uphold the condition would frustrate the purposes of RCW 7.68.200-.340 inclusive, the Court of Appeals struck the condition from the defendant's judgment and sentence that prohibited the defendant from profiting from any commercialization related to her crimes.

*State v. Nelson*, 100 Wn. App. 226, 996 P.2d 651 (Div. I, April 10, 2000)

The defendant was found guilty of first degree manslaughter while armed with a deadly weapon. At sentencing, the trial court imposed a 150-month standard range sentence, which included 60 months for the deadly weapon enhancement. The trial court also stated that it was imposing a term of community placement, which it "believed" was 24 months. The defendant appealed his judgment and sentence, contending that the sentencing court erred by failing to specify a definite term of community placement, and further argued that the boiler plate language used in his judgment and sentence did nothing more than set forth the potential statutory periods of community placement. The Court

remanded the case to the trial court to amend the judgment and sentence so that it clearly stated the actual term of the defendant's community placement, citing *State v. Broadaway*, 133 Wn.2d at 135.

*State v. Brown*, 100 Wn. App. 104, 995 P.2d 1278 (Div. I, March 27, 2000)

The defendant was convicted of first degree felony murder, two counts of first degree robbery, first degree rape, and three counts of first degree assault. The co-defendant was charged with first degree robbery, first degree rape and first degree assault. Each count included a firearm enhancement. During sentencing, the trial court ordered that the murder, rape, and one of the assault charges run consecutively and that the other charges run concurrently. The trial court also imposed firearm enhancements for each count and ordered all of the enhancements to run consecutive to the underlying sentence and consecutive to one another. The defendants' appealed, asserting that the trial court erred in imposing consecutive sentences for the rape and assault because the offense did not constitute a "separate and distinct criminal conduct." The Court of Appeals held that crimes that do not constitute the "same criminal conduct" are necessarily "separate and distinct." Therefore, because the rape and assault of one of the victims were serious violent offenses that constituted separate and distinct criminal conduct, the trial court properly imposed consecutive sentences on the defendants.

*State v. Wilson*, 100 Wn. App. 44, 995 P.2d 1260 (Div. III, March 21, 2000)

The defendant pled guilty to first degree theft and was ordered to pay over \$15,000 in restitution, including \$5,266 for the employer's investigation costs. The defendant appealed. The Court of Appeals defined the issues in the case as (1) whether the trial court erred by allowing restitution for the victim's expenses expended to ascertain the extent of an embezzlement; and (2) concluding the investigation expenses met the causal connection requirements of RCW 9.94A.142. The Court of Appeals held that: (1) In a restitution context, investigative expenses incurred to prove monetary loss due to embezzlement are causally connected to the crime when they are a reasonable consequence of the defendant's criminal acts; (2) a restitution order properly included costs of overtime, bookkeeping, accounting, and private detective and attorney services incurred by the employer to ascertain the extent of the defendant's embezzlement; and (3) the evidence in the defendant's case supported the amount of investigative costs awarded.

*State v. Beals*, 100 Wn. App. 189, 997 P.2d 941 (Div. I, March 6, 2000)

The defendant was convicted of second degree assault and attempted first degree robbery, both while armed with a deadly weapon. The defendant was sentenced to life in prison without parole, pursuant to the Persistent Offender Accountability Act (POAA), based in part on a prior out of state assault conviction. The defendant appealed, contending that his assault and robbery charges merged, challenged the classification of his North Carolina conviction, and asserted that the POAA was contrary to the SRA, as his life sentence without the possibility of parole violated the SRA requirement that a determinate sentence be imposed "with exactitude." The Court of Appeals held that, among other issues, a classification of an out-of-state conviction may be raised for the first time on appeal. The Court also held that before an out-of-state conviction can be used for sentencing, the SRA requires the state to prove by a preponderance of the evidence both the existence of the prior conviction and its classification. To properly classify a conviction, the sentencing court must compare the elements of the out-of-state offense with the elements of the potentially comparable Washington crimes. If the elements are not identical, or if the offense is defined more narrowly in Washington, a court may need to inquire into the record of the out-of-state conviction to determine whether the defendant's conduct would have violated a comparable Washington offense. The State, not the defendant, bears the ultimate burden of ensuring the record supports the existence and classification of out of state convictions. The Court also ruled that the POAA is part of the SRA, therefore the lack of a determinative sentence is not contrary to the SRA.



*In re the Personal Restraint Petition of McNeal*, 99 Wn. App. 617, 994 P.2d 890 (Div. I, March 6, 2000)

The petitioner filed a personal restraint petition seeking relief from the revocation of his community custody. The petitioner argued that the liberty interest of an individual in community custody is similar to that of a parolee and therefore a revocation hearing requires the due process protections established in *Morrissey v. Brewer*, 408 U.S. 471 (1972). The Court of Appeals held that an individual facing community custody revocation is entitled to the procedural protections established in *Morrissey*, but that counsel is not required. Because the Court found that the petitioner's community custody hearing did not comply with the due process requirements set out in *Morrissey*, the personal restraint petition was granted.

*State v. Tetreault*, 99 Wn. App. 435, 998 P.2d 330 (Div. I, February 22, 2000)

The defendant pled guilty to first degree assault and was sentenced. A restitution hearing was initially set, but was stricken by the State without having previously requested an extension of time for another restitution hearing. Subsequently, a restitution hearing was held after expiration of the 180-day period for determining restitution as prescribed by RCW 9.94A.142. At the restitution hearing, the trial court found that the State had good cause for the untimely hearing because the State was not able to timely obtain the insurer's documentation related to the medical expenses of the victim, and ordered restitution. The defendant appealed. The Court of Appeals held that while a court may extend the 180-day period for good cause, it can only do so upon a request of one of the parties. In the absence of such a request, the restitution order in the defendant's case, which was imposed after the 180-day period, was vacated.

*State v. Henderson*, 99 Wn. App. 369, 993 P.2d 928 (Div. II, February 11, 2000)

The defendant pled guilty to unlawful possession of firearm in the first degree. The defendant appealed the trial court's standard range sentence of 41 months imposed at a resentencing necessitated by misinformation during the original sentencing. Specifically, the defendant asserted that the Court's refusal to follow the State's recommendation at resentencing constituted error. The Court of Appeals held that, among other issues, a sentence within the standard range generally is not appealable, however, an appellant may challenge the procedure used by the trial court to impose a standard range sentence. Therefore, where the central issue involves a matter of statutory construction, rather than a claim that the trial court abused its discretion, an appellate court will allow a challenge to a standard range sentence, citing *State v. Onefrey*, 119 Wn.2d at 574 n.1(1992). The Court of Appeals also held that specific performance of a plea agreement only means that the prosecutor is required to recommend what he or she agreed to recommend, and that the court has discretion to fashion an appropriate remedy within the bounds described in *State v. Miller*, 110 Wn.2d 528 (1988).

*State v. Flett*, 98 Wn. App. 799, 992 P.2d 1028 (Div. III, January 11, 2000)

The defendant was convicted of four counts of first degree assault while armed with a firearm, and was sentenced to 459 months, based upon four consecutive base standard range sentences totaling 399 months, together with a consecutive 60 month firearm enhancement on each count which ran concurrently with the other firearm enhancements. The State appealed the sentence, contending that the four firearm enhancements should have run consecutively with each other. The Court of Appeals held, among other issues, that it is statutorily mandatory, based on RCW 9.94A.310(3), that firearm enhancements run consecutively to each other. Thus, the Court held that the defendant's presumptive minimum sentence, including the firearm enhancements, was 639 months, based on 399 months as a base standard range sentence, and 240 months for the firearm enhancements.

*State v. Schmeck*, 98 Wn. App. 647, 990 P.2d 472 (Div. III, December 28, 1999)

The defendant pled guilty to violation of a no contact order. Citing the defendant's ongoing pattern of domestic abuse, the trial judge sentenced him to a standard range sentence, but imposed an exceptional community supervision period that included ordered participation in drug and alcohol treatment and anger management programs. The defendant appealed, contending that the trial court lacked authority to order participation in affirmative programs. The Court of Appeals held that when an offender is charged with an unranked crime without a standard sentence range, the court is limited to sentencing the offender to not more than one year of confinement and one year of community supervision. The Court of Appeals also held that the trial court is also limited to imposing only "crime related" prohibitions, based on the defendant's criminal behavior at issue in the case.

*State v. McNeal*, 98 Wn. App. 585, 991 P.2d 649 (Div. II, December 22, 1999)

The defendant was convicted of vehicular homicide, vehicular assault, and possession of a controlled substance with intent to deliver. The defendant challenged the trial court's imposition of exceptional sentences, claiming that running the sentences consecutively was not supported by factual findings and was not legally sound. Due to his prior convictions, the defendant's offender score for possession with intent to deliver would have caused the sentence for that offense to eclipse the other two offenses, resulting in a lack of punishment for the vehicular homicide and vehicular assault. The Court of Appeals held that when a defendant's multiple current convictions, combined with the defendant's high offender score, would otherwise result in there being no additional penalty for some of the defendant's crimes, an exceptional sentence which runs each of the defendant's sentences consecutively with one another is appropriate, citing *State v. Stephens*, 116 Wn.2d 238, 240, 803 P.2d 319 (1991).

*State v. Keller*, 98 Wn. App. 381, 990 P.2d 423 (Div. I, December 13, 1999)

The defendant was convicted of vehicular assault and felony hit and run. The defendant appealed his conviction, contending that the trial court erroneously sentenced him to life imprisonment without the possibility of parole under the Persistent Offender Accountability Act (POAA), because his two prior convictions for "most serious offenses," which were served concurrently, were committed before July 1, 1986. The defendant contended those prior offenses should only count as one, not two, for the purposes of the POAA. The Court of Appeals held that under the POAA in effect at the time of the defendant's case, two prior convictions, even when sentences for those convictions are served concurrently, count as two convictions for determining an offender's offender score for sentencing. Therefore, the trial court properly counted each of the defendant's two prior "most serious offenses" when it found the defendant to be a persistent offender under the POAA.

*State v. Schwab*, 98 Wn. App. 179, 988 P.2d 1045 (Div. I, December 6, 1999)

The defendant was convicted of second degree felony murder and first degree manslaughter in connection with a single homicide. The defendant appealed, asserting that convictions for second degree felony murder and first degree manslaughter for one homicide violated state and federal guarantees against double jeopardy. The Court of Appeals upheld the defendant's appeal. The Court of Appeals held that under the SRA, if the sentencing court enters a finding that some or all of the current offenses encompass the same criminal conduct, then those current offenses shall be counted as one crime. The Court also held that under the statutory definitions for murder and manslaughter, convictions for both when there is a single homicide violates the double jeopardy clause of both the state and federal constitutions.

*State v. Murphy*, 98 Wn. App. 42, 988 P.2d 1018 (Div. II, November 19, 1999)

The defendant was found guilty of one count of first degree burglary, five counts of theft of a

firearm, and five counts of second degree unlawful possession of a firearm. The State appealed the sentence, claiming (1) that the trial court erred in determining that the offenses constituted one crime and therefore setting the defendant's offender score at zero for each count; and (2) that the trial court erred in running the sentences for theft of a firearm and unlawful possession concurrently. The Court of Appeals held that the proper provision for determining a defendant's offender score is the SRA's "same criminal conduct" provision. The Hard Time for Armed Crime Act's "separate offense provision merely authorizes the state to charge one count for each firearm offense, and does not affect offender scoring under the SRA. However, the Court also ruled that the Hard Time for Armed Crime Act deals more specifically with the sentencing for the crimes of firearm theft and unlawful possession than does the more general SRA, which covers all types of offenses. Thus, under the plain language of the Hard Time for Armed Crime Act, the defendant's sentences for his 10 firearm theft and possession convictions properly ran consecutively to one another.

*State v. Olney*, 97 Wn. App. 913, 987 P.2d 662 (Div. II, November 12, 1999)

The defendant was convicted of second degree assault, and received a sentence of six months on the assault charge and three years for the firearm enhancement provision of RCW 9.94A.310(3). The defendant appealed the addition of the three year firearm sentence enhancement, claiming that because the State failed to propose a special verdict form which allowed the jury to find that he was armed with a firearm, the trial court was precluded from adding a firearm enhancement. The defendant contended that because the jury had not made the specific determination that a firearm was used, the lesser enhancement for use of a deadly weapon should have been imposed. The Court of Appeals held that a trial court may sentence using the firearm enhancement when a jury returns a special verdict finding that the defendant was armed with a deadly weapon, and the evidence in the case makes clear that the deadly weapon used was a firearm.

*State v. Acrey*, 97 Wn. App. 784, 988 P.2d 17 (Div. I, November 1, 1999)

The defendant was convicted of two counts of third degree assault and one count of possession of cocaine, and was sentenced to prison terms within the standard range for each offense, plus a one year term of community placement for the possession count. The defendant appealed his sentence, contending that the trial court imposed a sentence greater than the statutory maximum. The Court of Appeals held that if the defendant earned no early release, RCW 9.94A.170(3) required his RCW 9.94A.120(9)(a) mandatory twelve-month community placement term to be tolled while he is serving the remaining 17 months on his 60-month assault conviction. The Court also held that there was no reason to require a sentencing court to reduce a criminal defendant's sentences if "the defendant happens to be sentenced at the same time to a longer sentence on a completely different crime," citing *State v. Cameron*, 71 Wn. App. at 655-56. Therefore, the Court of Appeals affirmed the defendant's sentence.

*State v. Schloredt*, 97 Wn. App. 789, 987 P.2d 647 (Div. I, November 1, 1999)

The defendant was convicted of burglary in the second degree and four counts of possession of stolen property in the second degree. The defendant appealed, claiming that the trial court erred by not imposing an exceptional sentence based on the defendant's mental condition. The Court of Appeals held that: Appellate review of a standard range sentence is permissible only in limited circumstances, such as when the trial court has refused to exercise discretion at all, or, has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range. A trial court that has considered the facts and has concluded that there is no basis for an exceptional sentence has exercised its discretion and therefore, the defendant may not appeal such a ruling.

*State v. Johnson*, 97 Wn. App. 679, 988 P.2d 460 (Div. II, October 15, 1999)

The defendant pled guilty to two bad check charges. The defendant appealed his community supervision requirements for evaluation, treatment and random urinalysis and breath tests, contending that there was no reasonable relationship between his crimes and such requirements. The Court of Appeals held that although the above conditions to which the defendant objected were not, based on the record, crime related, the conditions of a first time offender sentence need not be “crime related” as defined by RCW 9.94A.030(11), but may include provisions requiring participation in rehabilitative programs or affirmative conduct for rehabilitation, citing *State v. Parramore*, 53 Wn. App. at 529-30.

*State v. Rai*, 97 Wn. App. 307, 983 P.2d 712 (Div. I, September 7, 1999)

The defendant was found guilty of two counts of second degree assault. In a special verdict, the jury found that the defendant was armed with a deadly weapon during the commission of the crime. The defendant's sentence included an enhancement for each assault under the deadly weapons enhancement provision of RCW 9.94A.125. The State appealed the defendant's enhancement, contending that the trial court erred by sentencing the defendant under the deadly weapons enhancement provision RCW 9.94A.125, rather than the firearm enhancement provision of RCW 9.94A.310(3)(b). The Court of Appeals held that the language of RCW 9.94A.310(3)(e) was unambiguous, and that a sentencing court must add three years to the sentence of a defendant who commits the crime of assault in the second degree while armed with a firearm. Where there was uncontested evidence before the court showing that the defendant was armed with a firearm, the trial court errs as a matter of law by failing to utilize the firearm enhancement.

*State v. Rowland*, 97 Wn. App. 301, 983 P.2d 696 (Div. III, September 2, 1999)

The defendant pled guilty to two counts of theft of a firearm. The issue in the case was whether the trial court erred by sentencing the defendant within the agreed sentencing range without considering if the offenses of conviction constituted the same criminal conduct under RCW 9.94A.400(1) for purposes of calculating the offender score. The Court of Appeals held that a challenge to an offender score calculation may be considered for the first time on appeal, and that when multiple offenses constitute the same criminal conduct for sentencing purposes, the current offenses should be counted as one crime.

*State v. Edelman*, 97 Wn. App. 161, 984 P.2d 421 (Div. I, August 30, 1999)

The defendant was convicted of first degree theft. The primary issue in the case was whether a trial court has the authority to modify a restitution order entered under RCW 9.94A.142 to provide for payment to a victim's estate after the victim has passed away. The Court of Appeals held that courts do have the authority to modify a restitution order entered under RCW 9.94A.142 to provide for payment to a victim's estate after the victim has died. While restitution under the victims' compensation act has a strong compensatory purpose, restitution under the sentencing reform act is primarily punitive in nature, and requires an offender to “face the consequences of his or her crime.” Therefore, the Court held that an offender's restitution obligation does not automatically end when a victim dies.

*In re Sentence of Kindberg*, 97 Wn. App. 287, 983 P.2d 684 (Div. I, August 30, 1999)

The State petitioned to modify a sentence imposed for a conviction of unlawful possession of a controlled substance, asking that the order for required community supervision be changed to community custody. While the defendant was ordered to serve her sentence in DOC confinement because that confinement was ordered pursuant to RCW 9.94A.190(3) (individuals sentenced to less than one year of confinement on a felony conviction who are already confined to DOC or have been sentenced to DOC custody on another felony charge will serve all terms of confinement in a DOC

facility), the Court determined that the decision to impose community supervision rather than community custody was discretionary.

*In re Personal Restraint of Crowder*, 97 Wn. App. 598, 985 P.2d 944 (Div. I, August 16, 1999)

The petitioner alleged that his liberty interests were denied when he was placed in community custody 101 days after his earned early release date. The Court of Appeals held that the statutory right to earned early release credits creates a limited liberty interest requiring minimal due process. The Court also held that offenders sentenced to community placement restrictions are excluded from the program allowing general release based on early release credits, but the Department of Corrections has the discretion to consider transferring the offender to community custody.

*State v. Kane*, #45176-6-I, (Wn. App., Div. I, July 24, 2000)

The defendant pled guilty to one count of possession of heroin with intent to deliver. The defendant's standard range sentence was 43 – 57 months. At the defendant's sentencing hearing, the State recommended 43 months of total confinement, the low end of the standard range. The defendant requested an alternative sentence under RCW 9.94A.120(6), the drug offender sentencing alternative (DOSA). The State objected to the defendant's request for an alternative sentence under DOSA, asserting that the above statute, after being amended with a resulting effective date of, July 1, 1999, did not apply to the defendant, whose crime was committed before the new statute's effective date. The trial court determined, however, that the new statute did apply to the defendant, and imposed an alternative sentence consisting of a prison term of 25 months, to be followed by 25 months of community custody in compliance with a treatment program. The State appealed. The Court of Appeals held that the new 1999 DOSA sentencing provisions are not retroactively applicable to cases in which the offense occurred on or before the effective date of the law.